United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

75-1360

ORIGINAL

B
P/S

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

THOMAS ZAMMAS,

Appellant.

On Appeal from the United States District Court for the Southern District of New York

APPELLANT'S APPENDIX

Volume I, pp. 1a – 300a

FRANKLIN, ULLMAN, KIMLER
ENTIN & KATZ, P.A.
Attorneys for Appellant
2020 North East 163rd Street
Suite 300
North Miami Beach, Florida 33162
(305) 949-5262

WYNN & ATLAS
230 Park Avenue
New York, New York 10017
(212) 679-9429

UNITED STATES COURT OF APPEALS
FILED
NOV 26 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

(8945)

LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N.J. (201) 257-6850
New York, N.Y. (212) 563-2121
Philadelphia, Pa. (215) 563-5587
Washington, D.C. (201) 783-7288

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	1a
Indictment	5a
Motion For Bill of Particulars and Discovery	11a
Government's Response to Motion For Bill of Particulars	13a
Government's Offer of Proof Dated June 25, 1975	15a
Government's Memorandum of Law in Support of the Admission into Evidence of Statements Made by the Defendant's Agent	16a
Defendant's Exhibit 1	18a
Defendant's Exhibit L	26a
Judgment and Commitment	27a
Transcript of Trial	28a
Guilty Plea of Defendant William Eric Aiken	30a
Judge's Preliminary Instructions . . .	56a

Contents

	Page
Opening for the Government	70a
Prosecution's Summation	1078a
Defendant's Summation (Rodman) . . .	1107a
Defendant's Summation (Zammas) . .	1136a
Prosecution's Rebuttal	1168a
Brady Material	1194a
Court's Charges to the Jury	1205a
Sentence	1312a

WITNESSES

Stanley Permutter:	
Direct	85a
Cross	103a
Redirect	185a
Recross	191a
William Eric Aiken:	
Direct	195a
Cross	244a
Redirect	355a, 366a
Recross	361a, 366a

Contents

	Page
Pericles Constantinou:	
Direct	367a
Cross	371a
Redirect	388a
John Murray:	
Direct	392a
Cross	401a
Hugo Heuerman:	
Direct	417a
Cross	418a
Bess J. Mersten:	
Direct	422a
Cross	424a
Redirect	425a
Josefina Arencibia:	
Direct	425a
Cross	427a
Theodore Bottino:	
Direct	429a
Cross	433a
Bernard Jaffe:	
Direct	434a
Cross	435a
Redirect	436a
Recross	436a

Contents

	Page
Elena J. Frevola:	
Direct	449a
Cross	451a
Susan Robbins Aiken:	
Direct	452a
Cross	460a
Robert John Wymbs:	
Direct	471a
Cross	486a
Redirect	645a
Irving Orenstein:	
Direct	686a
Cross	693a
Redirect	696a
Recross	697a
Alan Umbogy:	
Direct	700a
Cross	710a
Redirect	814a
Recross	821a
Dan A.J. Lettieri:	
Direct	833a
Cross	836a
Lawrence Lindsay:	
Direct	838a, 979a
Cross	849a, 981a
Redirect	986a

Contents

	Page
Leonard Flocco:	
Direct	859a
Cross	880a
Redirect	945a
John Mackey:	
Direct	946a
Cross	952a
Stephanie Palumbo:	
Direct	954a
Peter Shaeffer:	
Direct	976a
Arthur Levine:	
Direct	988a
Cross	991a
Redirect	1003a
Edward J. Crooker:	
Direct	1004a
Cross	1010a
Redirect	1022a, 1024a
Recross	1023a

DOCKET ENTRIES

D. C. Form No. 100 -
CRIMINAL DOCKET

JUDGE ~~MOTLEY~~ MOTLEY

74 CRIM. 987

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	John A. Lowe, AUSA.
~ WILLIAM ERIC AIKEN	791-1987
WILLIAM RODMAN	
~ THOMAS ZAMMAS	
	For Defendant:
	W.J.Rodman-Morton Berger,Esq.
	54 Durham Rd.White Plains,N.Y.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED		DISBURSED
[illegible]			10/6/75	LILLMAN	5	—	
[illegible]			10/7/75	Treas			5
Marshal,							
Attorney,							
[illegible] 18,15							
[illegible] 1341,77q(b),77x							
18:1341 Mail fraud.(Cts.1-6)							
15:77q(b),77x Stock fraud.(Cts.7-12)							
(Twelve Counts)							

DATE	PROCEEDINGS
10-24-74	Filed indictment. B/W ordered as to deft. Zammas only. Weinfeld,J.
11-4-74	All defts.(attys. present) Defts. plead not guilty. Motions returnable Bail fixed as to all defts. at $25,000. P.R.B. Defts. ordered photographed and fingerprinted. B/W vacated as to deft. Zammas. Case assigned to Judge Motley for all purposes. Cannella,J.
11-4-74	W.J.RODMAN - Filed P.R.B. in amt.of $25,000.
11-4-74	T.ZAMMAS - Filed P.R.B. in amt.of $25,000.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	DEFENDANT
11-18-74	T.ZAMMAS --- Filed motion for bill of particulars and discovery.		
11-18-74	THOMAS ZAMMAS ~~ALBERT~~ - Filed motion to dismiss the indictment.		
11-18-74	THOMAS ZAMMAS - Filed motion for severance and relief from prejudicial joinder		
11-18-74	THOMAS ZAMMAS - Filed motion for extension of time to file motions.		
11-18-74	THOMAS ZAMMAS - Filed memorandum of law in support of above motions.		
11-18-74	THOMAS ZAMMAS - Filed memo endorsed on motion filed 11-18-74....The within motion is granted...Motley,J. m/n		
2-7-75	Filed motion for issuance of subpoena duces tecum(By atty.A.E.Entin)		
2-7-75	Filed memorandum of law in support of above motion...		
2-14-75	Filed bill of particulars		
5-14-75	Filed memo endorsed on motion filed 2-7-75..The within motion having been unopposed by the Govt. is hereby granted*****Motley,J. m/n		
7-28-75	WILLIAM ERIC AIKEN - Deft & atty.present...Withdraws plea of not guilty and pleads GUILTY to count 7 only..P.S.I. ordered..Sent. 9-22-75 11a.m...Present bail cont.		
7-28-75	William Eric Aiken - Filed petition to enter plea of guilty..		
7-28-75	WILLIAM RODMAN) JURY trial begun before Motley,J. THOMAS ZAMMAS)		
7-29-75	Trial Cont'd.		
7-30-75	Trial Cont'd.		
7-31-75	Trial Cont'd.		
8-1-75	Trial Cont'd.		
8-4-75	Trial Cont'd.		
8-5-75	Trial Cont'd.		

(See Page 3)

DATE	PROCEEDINGS
	Trial Cont'd.
	Trial Cont'd. and concluded..Jury finds ZAMMAS GUILTY on Cts.1 thru 12..Pre-sentence report ordered..Sent.9-22-75 at 2 P.M. Jury deadlocked as to RODMAN & MISTRIAL DECLARED.....MOTLEY,J.....
	Filed application and Order compelling Stephanie Palumbo to give testimony
	Filed Govt's 3500 material ordered sealed for purpose of appeal....Motley,J. (Placed in Clerks vault Rm602)
	T.ZAMMAS - Filed motion for a new trial pursuant to rule 33
	Filed financial affdvt. of ROBERT WYMBS Material Witness...
	W.RODMAN) Filed Govt's memorandum Re Disclosure of information from D.Gennaro T.ZAMMAS)
	Filed Govt's memorandum in support of admissibility of prior statements.
	Filed Govt's requested ~~xxx~~ pre-trial instructions of jurors.
	Filed Govts proposed examination of jurors
	T.ZAMMAS - Filed memo endorsed on motion filed 8-11-75....The within motion for a new trial is denied.....So Ordered...Motley, J..
	WILLIAM RODMAN, Filed affdvt. of John A. Lowe, AUSA in support of writ...Ret. 7-31-75 & 8-1-75.
8-11-75	Filed transcript of record of proceedings, dated July 31, 1975 & August 4, 1975.
8-22-75	Filed transcript of record of proceedings, dated Aug 5, 6 & 7, 1975
	WILLIAM ERIC AIKEN - Filed Judgment(Atty.Louis Pulvermacher)Deft sentenced to EIGHTEEN MONTHS, Execution of sentence is suspended..Deft is placed on Probation for a period of TWO YEARS, subject to the standing probation order of this Court.....On motion of defts counsel with ~~them~~ consent of the Govt. counts 1 thru 6 incl, and counts 8 thru 12 incl, are dismissed....Motley,J.. Ent.9-23-75----------
9-29-75	T.ZAMMAS - Filed stip. and order that the sentence date be adjourned to 9-29-75.. Motley, J.....
9-23-75	W.E.AIKEN - Filed sentencing memorandum ..
9-29-75	THOMAS ZAMMAS - Filed judgment(Atty.Richard Wynn,present)deft is committed for imprisonment for a period of EIGHTEEN MONTHS on each of cts.1 thru 12 to run concurrently with each other...Execution of sentence stayed pending appeal..Deft's bail pending appeal cont'd.....MOTLEY, J.....Ent.on docket 10-1-75------
10-2-75	Filed Govt's memorandum in opposition to deft Zammas motion to dismiss,for severance and discovery...
10-2-75	Filed Govt's memorandum in opposition to motion to dismiss.
10-2-75	Filed Govt's sentencing memorandum as to WILLIAM E. AIKEN..

DATE	PROCEEDINGS
10-6-75	THOMAS ZAMMAS - Filed notice of appeal from judgment dated 9-29-75. Copy given to AUSA and mailed to deft at 1951 Southwest 23 St. Miami, Fla.

JAL:dlf

5a

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 987

- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

- v - : INDICTMENT

WILLIAM ERIC AIKEN, : 74 Cr.
WILLIAM RODMAN and
THOMAS ZAMMAS, :

Defendant. :

- - - - - - - - - - - - - - - - - - -x

U.S. DISTRICT COURT
FILED
OCT 24 1974
S. D. OF N. Y.

The Grand Jury charges:

Introduction

1. At all times relevant herein, Power Conversion, Inc., a New York corporation with principal offices at 70 MacQuesten Parkway South, Mount Vernon, New York, the common stock of which was publicly traded on the over-the-counter market, was a manufacturer of lithium cells and batteries.

2. At all times relevant herein, Value Line Selection & Opinion was part of the Value Line Investment Survey published by Arnold Bernhard & Co., Inc., a registered Investment Advisor with principal offices at 5 East 44th Street, New York, New York.

3. At all times relevant herein, WILLIAM ERIC AIKEN was the Editor of Value Line Selection & Opinion.

MICROFILM
OCT 24 1974

4. At all times relevant herein, WILLIAM RODMAN was a registered representative and trader for C.I.Oren & Co., Inc., a registered Broker-Dealer with principal offices at 39 Broadway, New York, New York, which was making a market in the common stock of Power Conversion, Inc.

5. At all times relevant herein, THOMAS ZAMMAS was a self-employed securities dealer.

6. At all times relevant herein, WILLIAM RODMAN and THOMAS ZAMMAS were dealing in the common stock of Power Conversion, Inc.

COUNTS ONE THROUGH SIX

7. On or about September 29, 1972, in the Southern District of New York and elsewhere, the defendants, WILLIAM ERIC AIKEN, WILLIAM RODMAN, and THOMAS ZAMMAS, unlawfully, wilfully and knowingly, having devised and intending to devise a scheme and artifice to defraud Arnold Bernhard & Co., Inc., the subscribers and readers of Value Line Selection & Opinion, and the owners and potential purchasers of the common stock of Power Conversion, Inc. and to obtain money and property by means of false and fraudulent pretenses, representations, and promises and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did cause to be delivered by mail according to the directions thereon certain matter to be sent and delivered by the Post Office Department.

8. It was a part of said scheme and artifice to defraud that:

(a) Defendants WILLIAM RODMAN and THOMAS ZAMMAS, who were dealing in the common stock of Power Conversion, Inc. and promoting the sale thereof, would and did secretly pay a $15,000 bribe to the defendant ERIC AIKEN in return for which the defendant ERIC AIKEN agreed to write and publish an article in Value Line Selection & Opinion, recommending the purchase of Power Conversion stock, without disclosing in said article or elsewhere the material fact that the defendant ERIC AIKEN had received and accepted said bribe.

(b) Defendant ERIC AIKEN would and did write said article and cause it to be published in the September 29, 1972 issue of Value Line Selection & Opinion, which purports to be an independent, objective analysis of the stock of publicly traded corporations, falsely and fraudulently failing to disclose therein or elsewhere the material fact that the defendant ERIC AIKEN had received and accepted a $15,000 bribe from defendants WILLIAM RODMAN and THOMAS ZAMMAS in order to induce him to write said article.

9. On or about September 29, 1972, in the Southern Districtoof New York and elsewhere, WILLIAM ERIC AIKEN, WILLIAM RODMAN and THOMAS ZAMMAS, the defendants, unlawfully, wilfully and knowingly for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did cause to be delivered, by mail, according to the direction thereon, from 5701 Ke.nedy Boulevard, North Bergen, New Jersey to the persons hereinafter set forth in Counts One through Six, the September 29, 1972 issue of Value Line Selection & Opinion:

COUNT	ADDRESSEE
1	First National City Bank 399 Park Avenue New York, New York 10022
2	N.Y.Life Insurance Co. Mr. R.M. Brown, Jr., Pres. 51 Madison Ave., Rm. 1304 New York, New York 10010
3	E.F.Hutton & Co., Inc. One Battery Pk. Plaza New York, New York 10004
4	Chemical Bank NY Trust Co. 277 Park Avenue New York, New York 10017
5	Monarch Insurance Ohio 19 Rector Street New York, New York 10006
6	Loeb Rhoades & Co. 375 Park Avenue, Ste. 2501 New York, New York 10022

(Title 18, United States Code, Sections 1341 and 2.)

JAL:dlf

COUNTS SEVEN THROUGH TWELVE

The Grand Jury further charges:

1. On or about September 29, 1972, in the Southern District of New York and elsewhere, the defendants, WILLIAM ERIC AIKEN, WILLIAM RODMAN and THOMAS ZAMMAS, unlawfully, wilfully and knowingly, by the use of the mails, as hereinafte set forth, did cause to be published and circulated an article in the September 29, 1972 issue of Value Line Selection & Opinion describing the common stock of Power Conversion, Inc. without disclosing in any way a $15,000 bribe paid as consideration for said article to the defendant WILLIAM ERIC AIKEN by the defendants WILLIAM RODMAN and THOMAS ZAMMAS, who were dealers in the stock of Power Conversion, Inc.

2. On or about September 29, 1972, in the Southern District of New York, WILLIAM ERIC AIKEN, WILLIAM RODMAN and THOMAS ZAMMAS, the defendants, unlawfully, wilfully and knowingly, did cause the September 29, 1972 issue of Value Line to be delivered by mail to the persons hereinafter set forth in Counts Seven through Twelve:

JAL:dlf

COUNT	ADDRESSEE
7	First National City Bank 399 Park Avenue New York, New York 10022
8	N.Y.Life Insurance Co. Mr. R.M.Brown, Jr. Pres. 51 Madison Avenue, Rm.1304 New York, New York 10010
9	E.F.Hutton & Co., Inc. One Battery Pk. Plaza New York, New York 10004
10	Chemical Bank NY Trust Co. 277 Park Avenue New York, New York 10017
11	Monarch Insurance Ohio 19 Rector Street New York, New York 10006
12	Loeb Rhoades & Co. 375 Park Avenue, Ste. 2501 New York, New York 10022

(Title 15, United States Code, Sections 77q(b) and 77x; Title 18, United States Code, Section 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By E. [illegible]
Deputy Clerk

MOTION FOR BILL OF PARTICULARS AND DISCOVERY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

Plaintiff, :

-v- :

WILLIAM ERIC AIKEN, WILLIAM RODMAN and THOMAS ZAMMAS, :

Defendants. :

CASE NO. 74Cr.-987

MOTION FOR BILL OF PARTICULARS AND DISCOVERY

COMES NOW the Defendant, THOMAS G. ZAMMAS, by and through his undersigned attorney, and files this his Motion for Discovery and Bill of Particulars and requests that the Court require the United States Attorney to provide the following information to said Defendant:

1. The exact dates, times, places and manners in which the Defendant allegedly, willfully, knowingly and unlawfully devised with the other defendants in this cause a scheme or artifice to defraud the individuals named in Count I of the Indictment.

2. Detail any and all of the overt acts in furtherance of the alleged criminal activity that the Defendant, THOMAS G. ZAMMAS allegedly participated in, with regard to both Counts.

3. Supply in detail and with particularity, how and in what manner THOMAS G. ZAMMAS acted wilfully and knowingly, intentionally with the other defendants to use the mails to defraud stating with particularity the exact dates, times, places and manners said activity was done as outlined in Count II of the Indictment.

4. The name, address and telephone number of all witnesses known to the Government who have some knowledge of the facts in this case.

5. The names and addresses of those witnesses who the Government intends to call to give testimony at the trial of this case.

6. Supply to the Defendant all of the grand jury testimony and statements of witnesses who have knowledge of this case and/or who the Government intends to call at the trial of this case.

7. That per the local rules in the Southern District of New York, counsel has conferred with the Assistant United States Attorney charged with the prosecution of this matter, and said Assistant has agreed to the following discovery at a reasonable time prior to trial;

A. The approximate times, dates and places of events set forth in the Indictment.

B. The approximate manner and method of the payment of the bribe alleged in the Indictment.

C. The disclosure and right to inspect books, papers and documents, substantiating the Government's case, either presently in the possession of the Government or to be used by the Government at trial.

Alan L. Postman
ALAN L. POSTMAN

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Bill of Particulars and Discovery was mailed to Paul J. Curran, U.S. Attorney, c/o John Lowe, Assistant U. S. Attorney, U. S. Courthouse, 40 Centre Street, New York, New York 10007 this 14 day of November, 1974.

ULLMAN, KIMLER & ENTIN, P.A.
Suite 100
7630 Biscayne Boulevard
Miami, Florida 33138

By: Alan L. Postman
ALAN L. POSTMAN

JAL:ma
74-3366

GOVERNMENT'S RESPONSE TO MOTION FOR BILL OF PARTICULARS

RECEIVED
FEB 3 1975
JUDGE MOTLEY'S CHAMBERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, : BILL OF PARTICULARS

- v - :

WILLIAM ERIC AIKEN, : 74 Cr. 987 (CHM)
WILLIAM ROMAN and
THOMAS ZAMMAS, :

Defendants. :

- x

U.S. DISTRICT COURT
FILED
FEB 14 1975
S. D. OF N. Y.

S I R S :

As and for its Bill of Particulars pursuant to agreement between the defendant THOMAS ZAMMAS and the Government, the United States of America states as follows:

1. In or about the week ending September 15, 1972, in the evening, the defendant ZAMMAS met with the defendant AIKEN at LaFortuna Restaurant, 16 E. 41st St., N.Y.C. where an agreement to write and publish the subject article in return for undisclosed compensation was made.

2. On the same evening, in an apartment located at 35th St. and Lexington Ave., N.Y.C. the defendant ZAMMAS gave to the defendant AIKEN $1,000 in cash and certificates for 900 shares of Power Conversion, Inc.

3. On or about September 25, 1972, the defendant AIKEN wrote and published the subject article.

4. On or about September 28, 1972, in the evening, at the Ground Floor Cafe, 51 W. 52nd St., N.Y.C., the defendant ZAMMAS gave the defendant AIKEN $14,000 in cash.

JAL:ma
74-3366

Dated: New York, New York
January 31, 1975

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: John A. Lowe
JOHN A. LOWE
Assistant United States Attorney
Office and Post Office Address:
UnitedStates Courthouse
Foley Square
New York, New York 10007
Tel: (212) 791-1987

TO: MORTON BERGER, ESQ.
54 Durham Road
White Plains, N.Y. 10607

ULLMAN KIMLER & ENTIN, ESQS.
7630 Biscayne Blvd.
Suite 100
Miami, Florida 33138

LOUIS PULVERMACHER, ESQ.
410 Park Avenue
New York, N.Y. 10022

United States Department of Justice

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

JAL:dm

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

June 25, 1975

Alvin Entin, Esq.
Ullman, Kimler & Entin
7360 Biscayne Blvd.
Miami, Florida 33138

Morton Berger, Esq.
54 Durham Road
White Plains, NY 10607

Louis Pulvermacher, Esq.
410 Park Avenue
New York, NY

Re: United States v. Aiken, et al.
74 Cr. 987

Gentlemen:

The Government will offer proof of the following similar act by the defendants at the trial of the above-referenced case:

1. On or about September 25, 1970, the defendant Aiken published an article about Casa Bella Imports without disclosing a bribe promised to him by the defendant Zammas and other persons for publishing said article.

Proof of the similar act will be offered in connection with meetings and conversations which form a portion of the Government's direct evidence of the defendants' participation in the crimes charged in the indictment.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: John A. Lowe
JOHN A. LOWE
Assistant United States Attorney
(212) 791-1987

cc: Hon. Constance Baker Motley

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
- v -	:	74 Cr. 987
WILLIAM RODMAN and THOMAS ZAMMAS,	:	
Defendants.	:	

GOVERNMENT'S MEMORANDUM OF LAW IN SUPPORT OF THE ADMISSION INTO EVIDENCE OF STATEMENTS MADE BY THE DEFENDANTS' AGENTS.

This memorandum is respectfully submitted in support of the Government's offer in evidence of statements made by Stanley Perlmutter as agent for the defendants in the course of carrying out the fraudulent scheme charged in the indictment.

JAL:mp
74-3366

ONLY COPY AVAILABLE

The Government's proof will demonstrate that Perlmutter was used by the defendant Zammas to approach Eric Aiken and arrange the deal for Aiken to publish an article about Power Conversion without disclosing that the defendants had paid him a $15,000 bribe.

Perlmutter's statements to Aiken on Zammas' behalf are therefore admissible pursuant to Rule 801(d)(2)(D) and (E) of the Federal Rules of Evidence which eliminate from the hearsay rule statements made by agents and conspirators in the course of the agency or conspiracy, whether or not a conspiracy is charged in the indictment. Senate Judiciary Committee Report 93-1277. The rule is merely a restatement of existing law. United States v. Zane, 495 F.2d 683, 692 (2d Cir. 1974); United States v. Rinaldi, 393 F.2d 97, 99 (2d Cir.), cert. denied, 393 U.S. 913 (1968); United States v. Jones, 374 F.2d 414, 418 (2d Cir. 1967).

Similarly, statements by the defendant Zammas in furtherance of Zammas and Rodman's joint venture are admissible against both.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

JOHN A. LOWE
Assistant United States
Attorney
Of Counsel

ONLY COPY AVAILABLE

DEFENDANT'S EXHIBIT I

DEFT.
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

I

VALUE LINE SELECTION & OPINION

Published and Copyrighted 1970, by Arnold Bernhard & Co., Inc. Value Line Building, 5 East 44th Street, New York 10017

Volume XXVI No. 1 | In Three Parts – This is Part II | October 16, 1970

THE SPECIAL SITUATION: IMPERIAL INDUSTRIES, INC.

COMMON STOCK **RECENT PRICE: 10** **TRADED: OTC**

Construction, a depressed industry for the past year or so, is on the point of recovering lost momentum throughout the U.S. As it happens, however, a few domestic markets, notably Florida, have scarcely been fazed by the recent recession — at least so far as building activity is concerned. Indeed, with an economy strongly based on tourism, agriculture, and manufacturing, the Citrus State has been enjoying boom as usual business, which promises to endure.

Last year, for example, the state entertained some 21.5 million visitors. Many will return to live and work there. Population is up almost 30% over 1960 levels (5 million), and a better than 30% growth rate is expected during the current decade. (Florida's rate of population gain is currently exceeded only by Nevada and Arizona, which rank 49th and 35th, respectively, in terms of number of inhabitants.) One result has been a statewide surge in residential, industrial/commercial, and even agricultural construction. And the beat goes on. Between now and 1975, it's expected that Florida will add over 170,000 rental and condominium apartment structures; by the end of the decade, over 600,000 new single-family dwellings (in all price ranges) will have been built; and within the next 15 years, 53,000 more hotel rooms will be added to an already sizable inventory.

Imperial Industries, Inc. is among the principal beneficiaries of both the upbeat present and prospective pace. The company manufactures and distributes an extensive line of builders' hardware, including locks, lighting fixtures, electrical supplies, kitchen cabinetry (assembled or knocked down), doors of all kinds, counter tops, and related items in Florida and Caribbean markets. A wholly owned subsidiary makes metal patio/pool umbrellas, awnings, and siding sold around the world; another unit produces soft vinyl luggage retailed throughout the U.S. Having grown at a dizzying rate the past couple of years by traveling the acquisition route, Imperial is now seeking to consolidate its gains through internal development programs. The respite is both welcome and wise since the company will shortly be moving into a large new manufacturing complex. We do not, however, anticipate any appreciable deceleration in Imperial's rate of annual gain during this interim transition period.

Typically, building materials suppliers command multiples ranging from 10.5 to 18 times estimated current year earnings. At the low end of the scale (using medians for the 1955-69 period) are Certain-Teed (10.5) and Seagrave (14.5). Armstrong Cork (17) is among the more highly valued issues in the group. High-quality equities whose annual growth pace is in line with prevailing long-term interest rates (now around the 8% level) as a rule command multiples in the 12.5 to 13 range.

Imperial is expected to sustain annual sales and earnings gains of better than 20% over the next 3 to 5 years on the strength of its solid and expanding position in Florida markets and burgeoning stake in Caribbean outlets. The company's recorded and prospective rates of revenue gain compare most favorably with the improved pace projected for the industry over the next few years, as well as the laggard performance of the recent past. Profit progress is likewise expected to continue to stack up well. As volume has risen, pretax margins have widened appreciably — from 5.6% in 1967 to 7.2% last year. The company's share net was 96c last year, against 55c in 1968. We look for $1.00 or better (on 150,000 more shares outstanding) in 1970 and $1.35 next year when Imperial will have the full benefit of its new manufacturing and headquarters complex. Some further margin improvement is likely over the longer term, but we're assuming they'll remain in the 7% to 8% range to allow for possible problems as new capacity is brought on stream and the company resumes its acquisition activities.

In view of Imperial Industries' excellent growth record and strong

Continued on page 232

THE ISSUE AT A GLANCE

•Special Situation: Imperial Industries, a manufacturer and distributor of builders' hardware, operates primarily in Florida — the fastest growing big state in the nation. The company's record has been enviable, and the shares have appreciation potential of 130% to 1973-75. For details, please see the analysis beginning at left.

•The Value Line View: Peace feelers have become proposals, as President Nixon's plan for disengagement in Southeast Asia indicates. News from the domestic economic scene is less encouraging. For the moment at least, consumers are less ebullient with regard to spending plans. But once they let go, they could be a big help in sustaining the business expansion now getting underway. For details, plus the Value Line averages and the best and worst performing industry groups, please see page 226.

•Weekly Charts: For a graphic presentation of the Value Line Composite, Rails, Industrials, and Utilities Averages, see page 227.

•Special Reviews: Felsway Corp. (ASE — 16) and Merle Norman Cosmetics (ASE — 18). For our latest analyses, please see page 230.

•Updates: Anken Industries (OTC — 9¼); Aluminum Co. of America (NYSE — 56); Panhandle Eastern Pipeline (NYSE — 41); and Microdot (NYSE — 13). For our latest analyses and recommendations, please see page 231.

•Supervised Account: The model risk portfolio has completed some transactions. For details, please see page 232.

•Correction: Some prices were scrambled in the October 2, 1970 report on telecommunications. For the correct quotations, please see page 232.

THE VALUE LINE VIEW: REST PERIOD

President Nixon's far-reaching, five-point peace proposals, which include an unconditional standstill ceasefire throughout Indochina, are at worst a step in the right direction. At best, together with an eight-point Vietcong plan submitted earlier, they hold out real promise of practicable solutions for the enervating problems of Southeast Asia — once the reactionary rhetoric stage has been passed. Hanoi's perfunctory, and probably pro-forma, rejection of the allies' offer triggered an interim setback in the market. But it seems clear that the new initiative has laid the groundwork for serious private negotiations in Paris and elsewhere that may lead to final compromises.

On the home front, the impact of the lengthening strike at General Motors is becoming apparent. Steelmakers, for example, are resigned to an exceptionally poor year; the work stoppage has shut off an important outlet and made waves in other important markets like construction, capital goods, appliances, and packaging. Top U.S. aluminum suppliers are also feeling a pinch, shutting down production lines, and it's only a matter of time before other industries will be similarly affected in greater or lesser degree.

For all the short-run difficulties, the price tags on big-ticket consumer items continue to rise, albeit at a comparatively moderate rate. Earlier this month, American Motors raised prices on its 1971 model cars by approximately as much as the prior increases announced by its Big Three rivals. The hikes range from Chrysler Corp.'s 3.7% average to GM's 6.2%. AMC and Ford weighed in with boosts averaging 4.5% and 4.8%, respectively. The price of television sets, both color and monochrome, was also raised 3% at wholesale by RCA, and Zenith quickly followed suit. Other consumer electronics concerns have applauded the move; they're dragging their feet, however, because of still soft durables sales.

One reason for consumers' continuing reticence, of course, is the unemployment situation. The jobless rate jumped to 5.5% in September from 5.1% a month earlier. The gain was close to the biggest posted during the past decade, and the highest level reached since January of 1964 when 5.6% of the labor force was out of work. Administration officials were at some pains to sugarcoat the pill, probably in the hopes of blunting unemployment as an election issue. The party line is that the September survey was conducted earlier than usual and the data may not reflect the normal departure of young people returning to school. Democrats and labor leaders are not buying this, and it seems likely the issue will be kept in the public's consciousness at least through the November election.

Consumer caution is also apparent in the August slackening of the growth rate in installment debt after four straight months of modest expansion. The late summer lag was largely attributable to softness in the automobile sector. It's possible to interpret the slowdown optimistically (as Treasury Secretary Kennedy has done) on the grounds that consumers' strong financial position can help sustain the business expansion now getting underway. Any positive step toward disengagement in Southeast Asia could accelerate this process.

The money supply continues to grow at a brisk (better than 5%) pace as the Federal Reserve Board, mindful that over 5% of the nation's work force, plus over 20% of U.S. production capacity, stands idle, keeps a comparatively light hand on the credit reins. The rate of annual gain, which averaged a little better than 4% through the first nine months of the year, has been upped of late. It will probably remain at comparatively high levels until such time as there is conclusive evidence of a renewal of inflationary pressures.

So far, the principal beneficiaries of this monetary ease are the big-city banks. Declines in long-term interest rates make it cheaper for such institutions to secure funds for relending and also enhance bond trading activities' profitability. Reported third-quarter earnings gains in the banking group range from First National City's 14.1% to Chase Manhattan's 37.1%. With the benefit of hindsight, it's interesting to note the timing of the prime rate cut predated the end of the September quarter by about a week — about the time big banks could be expected to have a handle on the results they would be reporting.

An 80% invested position in common equities is still indicated, we believe. Once the GM strike is out of the way, the economy seems in sound shape to sustain worthwhile gains in corporate profits. Funds invested should be concentrated in issues ranked highest or above average for year-ahead market performance. SO

THE VALUE LINE AVERAGES

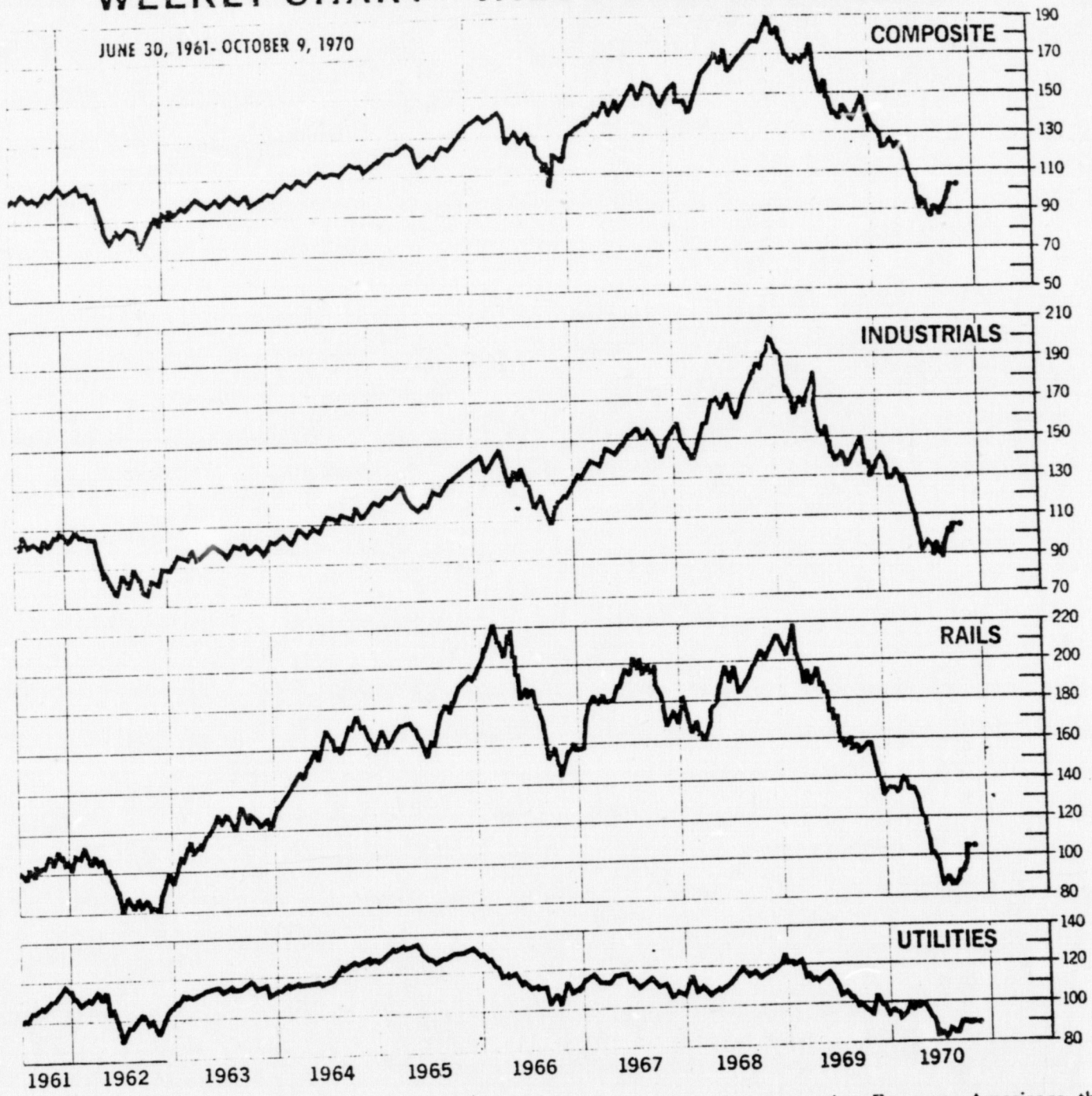
	Composite	Industrials	Rails	Utilities
9-28-70	101.24	103.69	100.62	89.27
9-29-70	102.18	104.75	102.45	89.35
9-30-70	102.32	104.90	103.88	89.29
10- 1-70	102.23	104.77	104.52	89.32
10- 2-70	103.12	105.73	105.94	89.70
10- 5-70	104.45	107.20	107.16	90.21
10- 6-70	104.38	107.14	106.30	90.13
10- 7-70	104.38	107.13	106.58	90.14
10- 8-70	103.07	105.64	106.18	89.90
10- 9-70	102.21	104.71	105.17	89.43

RELATIVE PRICE PERFORMANCE LAST SIX WEEKS

12 BEST INDUSTRIES		12 WORST INDUSTRIES	
Leasing	+65.9%	Brewing	+ 9.7%
Conglomerates	+37.0%	Grocery Store	+ 9.1%
Mobile Homes	+36.7%	Petroleum	+ 8.8%
Maritime	+33.1%	Food Processing	+ 7.9%
Recreation	+31.3%	Paper	+ 7.9%
Precision Instrument	+28.4%	Sugar	+ 6.7%
Railroads	+28.0%	Telecommunications	+ 5.4%
Office Equip./Computer	+27.3%	Natural Gas	+ 5.2%
Elec. & Electron. Equip.	+26.0%	Steel	+ 4.9%
Apparel	+25.3%	Banks	+ 2.8%
Coal	+24.9%	Electric Utility	+ 1.8%
Toys & School Supplies	+24.7%	Tire & Rubber	+ 1.1%

The corresponding change in the Value Line Composite Average is +14.5%

WEEKLY CHART—VALUE LINE AVERAGES



Imperial Industries

Continued from page 225

market position in an industry whose fortunes are at a turnaround point, the company's shares could be expected to command a price/earnings multiple toward the high end of the group's range. That they do not suggest the general disfavor into which construction issues of all kinds have fallen, plus investors' disenchantment with issues traded over the counter. Taking as many factors as possible into consideration, we are inclined to capitalize the stock's projected earnings at a conservative 10 times. On this basis, estimated 1973-75 net of $2.30 a share would suggest a normal average price of 23, more than 130% above the current level. (Imperial shares are currently quoted at around 10 times trail earnings.) The stock is suitable for moderately venturesome accounts aware of the risks involved in commitments in relatively unseasoned situations competing with larger rivals in a mature and sizable industry.

Place in the Sun

A brief check of the economic environments in Florida and Puerto Rico, as well as elsewhere in the Caribbean, serves to put Imperial's position and prospects into clearer perspective. For many Americans, the Sunshine State has become a sort of Camelot; visions of the good life — opportunity, comfort, convenience, and beauty in a single package — lure about 2,750 new residents a week. Florida, which ranks ninth overall in terms of population, is now the fastest growing big state in the nation.

Most, if not all, new Floridians come first as tourists to see the many sights, bask on the sun-splashed beaches, renew old acquaintances, or whatever. Last year's horde of over 21 million

Continued on page 228

Imperial Industries

Continued from page 227

(5% more than in 1968) left $6 billion in the state ($500 million more than in 1968). Comparable gains are expected at least through 1975, when, estimates Lt. Gov. Ray Osborne, 30 million visitors will spend $12 billion. To handle this influx, Florida's tourist facilities have been expanded almost 20% since 1965. Many new projects are in the works or on the drawing boards.

By far the most impressive undertaking is Disney World, which, along with its support and satellite facilities, represents an investment in excess of $600 million. Opening next year near Orlando in the east central part of the state, this 27,000-acre complex, which outdoes the fabulous original in Anaheim, Calif., is expected to attract 19 million first-time tourists to Florida and add $6.6 billion to the state's income over the next 10 years. Among the prospective economic gains attributable to this one attraction: 50,000 new jobs; some 27,000 new hotel/motel rooms (with an anticipated price tag of better than $250 million); and almost 38,000 new residential units (with an aggregate value of $750 million).

Another strong prop for Florida's economy is supplied by retirees; the number of Social Security recipients within the state rose 5%, passing the million mark last year. Because of their steady, dependable incomes, oldsters provide a valuable support element in the business equation during good times and bad.

Florida lures wage earners, as well as retirees and pleasure seekers. Over 75,000 new jobs opened up throughout the state in 1969, and new business incorporations were up more than 20% on a year-to-year basis. Total employment rose 5.2%, against 2.3% for the nation as a whole. This was reflected in personal income gains running around 12% and retail sales growth of over 13%. Complete data are not yet available for 1970, but the evidence suggests the state more than held its own.

The aerospace sector of the state's economy has been in the doldrums of late as a result of budget cutbacks and removal of certain operations to Houston. Oceanographic activity, however, appears to be providing a substantial offset. The University of Miami's School of Marine and Atmospheric Sciences, along with the U.S. Bureau of Fisheries' Bilological Lab and other Federal facilities, represents a formidable complex of deep-sea resources. Over 40 companies in and around the southern part of the state are currently engaged in oceanographic research and production of instrumentation and equipment for underwater applications.

The upshot of all this economic hustle and bustle is an ongoing construction boom. A recent survey by Contractor and Builder Magazine indicates that fully three-quarters of Florida's major metropolitan centers recorded year-to-year increases in building during 1969. The rate of gain has been, and will be, sustained. Highway construction continues to gather momentum, and educational institutions, straining under the load of record enrollments, will keep expanding their physical plants. Hospitals and medical facilities, likewise, must continue to boost their capacities. In the meantime, tourist attractions and accommodations flourish. And as the migration continues, residential housing will register further gains.

Treasure Island

Off the Florida coast. Puerto Rico, which means rich port in Spanish, is living up to its name these days. Over 1 million fun-loving tourists a year visit the West Indies island to rest and play in the sun. Businessmen view the Commonwealth, which is roughly the size of Rhode Island, in quite another light; as a result of investment and tax incentives, it enjoys one of the highest economic growth rates in the world. The Gross Commonwealth Product is expected to be about $7.4 billion by 1975, almost double the level of three years ago. The fast pace is largely attributable to the success of Operation Bootstrap, a development and promotion program dating back to the 1940's when Puerto Rico was still a backward, agricultural society.

Business: Imperial Industries, Inc. manufactures and distributes builders' hardware, including locks, lighting fixtures, electrical supplies, kitchen cabinetry, doors of all kinds, counter tops, and related items in Florida and Caribbean markets. A wholly owned subsidiary makes a line of metal patio/pool umbrellas, awnings, and siding that's sold throughout the world; another unit produces soft vinyl luggage, retailed in the U.S. Insiders control over 40% of the outstanding common stock. President: Paul S. Hicks. Address: 630 West 84th St., Hialeah, Fla. 33014.

Construction activity is currently running at an annual rate close to $1 billion and growing at a 10% pace. As a result of tax and investment lures, the island's industrial base, which has traditionally relied on light manufacturing and assembly, is being broadened. Petrochemical plants, for example, are a key element in this development, springing up like mushrooms after a rain. Annual investment in such projects now exceeds $1 billion. Another mainstay of the Commonwealth's economy, tourism, has produced a boom in resort and hotel construction; activity is also up in such support facilities as restaurants, recreation centers, beauty parlors, and retail stores. A new international airport and highway system promise to expand the industry's scope beyond the present hub of San Juan.

Puerto Rico's 3 million inhabitants, in the main, still lack adequate shelter and many of the services that are taken for granted in the U.S. Thus, public works and housing programs loom large on authorities' list of priorities. The island's Economic Development Agency pegs demand and consumption through 1975 at over 20,000 units annually. In addition, rehabilitation of existing inventory assures an offset during interim downward swings in new starts.

Elsewhere in the Caribbean, neighboring islands are enjoying tourist booms of their own. What's more commercial and industrial interests are increasingly inclined to develop sites there. Local authorities have been quick to encourage such activities to improve the lot of the resident populations through creation of new jobs.

Building Blocks

Imperial's operations, among the largest of their kind in Florida, are essentially designed to offer contractors one-stop shopping for specialty hardware and materials needs. The company's customer roster encompasses about 300 builders, based largely in Florida, who put up high-rise apartments, housing developments, offices, schools, hospitals, restaurants, and related structures.

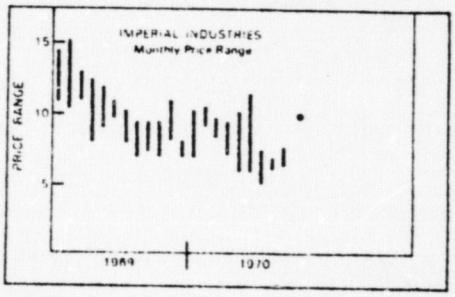
On the manufacturing side of the business, Imperial turns out kitchen cabinets, counter tops, and bathroom vanities; its lines also include wardrobe units, plastic toilet partitions, restaurant tables, commercial desks, and interior wall paneling in a variety of sizes, styles, coloring, and finishes. Nothing is turned out on spec; the company manufactures only against

specific orders. As a result, there's no problem with inventory. Substantially all of the cabinetry sold in Florida outlets is installed by Regal Wood Products, the subsidiary that produces it.

Another wholly owned subsidiary, Metal Tech, turns out fold-down awnings, patio/pool umbrellas, storm panels, and related aluminum products for use in roadside restaurants, hotels, motels, and private residences including conventional and mobile homes. Metal Tech has built a thriving business with its durable offerings largely because the canvas counterparts must be replaced every couple of years; its account list includes such names as Howard Johnson's, Holiday Inns, McDonald's, and Marriott Travel Lodges. The scope of this subsidiary's operations seems to have been considerably enhanced by the development of the so-called Weatherwall system. It consists of a multichanneled sliding sash arrangement, housing four interchangeable glazed panel frames; these units telescope upward, providing a shield against the elements, or downward, affording a 75% open area. This proprietary item, whose sales potential has been adjudged excellent by knowledgeable construction people, has a patent pending.

Before last year, when revenues more than doubled to $13.97 million and net income jumped from $234,823 to $518,710, Imperial's business was split about 50/50 between manufacturing and distribution. However, with the acquisition (for approximately $2 million in cash) of the Allied Group — five electrical supply houses located in Miami, West Palm Beach, Key West, Pomano Beach, and Hollywood — this balance shifted to 25/75. Allied, which deals almost exclusively with the electrical contracting trade, offers a complete line of supplies, including lighting fixtures, wire, conduit, safety switches, trim, motor controls, and the like for use in residential, industrial/commercial, and institutional structures. Allied has over 500 names on its accounts list, and it has yet to tap outlets in the Caribbean already served by other Imperial subsidiaries. In the fiscal year ended February 28, 1969, Allied grossed $6.2 million, netting about $194,000; volume is currently running at an estimated annual rate in excess of $10 million, with comparable after-tax margins.

In addition to the Allied Group's activities, Imperial distributes builders' hardware — locks, hinges, faucets,



CAPITAL STRUCTURE as of 12/31/69
Debt $2.4 mill Interest $112,000 mill.
Pfd Stock None Div'd
Common Stock 702,550 shares

	1966	1967	1968	1969	1970
Sales ($ mill.)	3.87	4.48	6.11	13.97	*18.00*
Profit Margin ①	4.4%	5.6%	6.1%	7.2%	*7.2%*
Plant Account	NA	.10	.18	1.05	
Working Cap'l②	NA	.65	1.82	2.37	
Book Value sh.	NA	3.30	3.30	2.79	
Earn'gs per sh.	.39	.63	.55	.96	*1.10*
D'v'ds per sh.	Nil	Nil	Nil	Nil	
D'v'd Payout	—	—	—	—	
Avg. Price/Earn.					
Avg. D.v.d Yield	—	—	—	—	

①-Pretax. ②-Year end.

door closers, knobs, and related items — turned out by the biggest five manufacturers at wholesale to over 300 contractors. The company also handles specialty interior supplies — for example, partitions, medicine cabinets, folding closet doors, and entrance systems. The hardware sales effort reinforces corporate pitches for kitchen cabinetry, aluminum awnings, and other items in the Imperial line. And by the same token, these wares afford access for the builders' hardware.

Until recently, the bulk of the orders written for builders' hardware involved wholesale deals. Imperial mindful of the $750 million worth of business done in the home improvement field at retail, decided to try for a piece of the action. Last year, accordingly, it signed on with Golden Triangle, a new chain of home improvement supermarkets that's owned and operated by Federated Stores. Initially, these outlets are carrying chandeliers and builders' hardware supplied by Imperial. Later on, it is planned, other lines (including those manufactured in-house) will be added. At the moment, this venture is operating only in Florida. But plans are afoot to go national.

Outside Interests

Imperial operates in the Caribbean through three separate ventures based in Puerto Rico. Imperial Wood Products assembles and sells knocked-down kitchen cabinets made in the company's Florida plants. A second affiliate, Aleco, manufactures and distributes folding and sliding doors, storefronts, and builders' hardware like that handled on the mainland. Caribbean Metal produces metal bifold closet doors under a tax-free license granted by the Commonwealth. Volume, which does not include any contribution from electrical supplies, in Puerto Rico and elsewhere in the Caribbean is running at about 10% of the corporate total. The addition of other lines promises to boost bookings substantially; this will prove advantageous since after-tax margins on offshore orders are somewhat more lucrative than corporate activities as a whole.

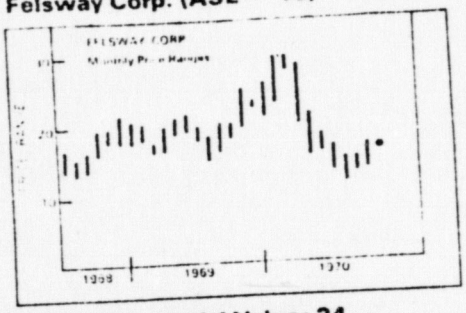
Imperial picked an apparently anomalous venture last year when it bought Pegasus, a producer of casual luggage and related travel accessories, for $490,000 in cash. About the only resemblance this unit bears to the company's other operations involves the fact that it enjoys a fast and profitable growth rate. Pegasus produces soft vinyl luggage sold through retail stores throughout the U.S. Pegasus bags can be carried abroad planes by air travelers and slipped under seats, thereby eliminating waiting time at journey's end. The concept has proved sufficiently attractive especially to busy executives for sales to have jumped from $100,000 in 1967 to $1.15 million last year; operating margins are in the 20% range. The Pegasus line is being expanded to include brief cases, garment carriers, tote bags, and the like in matching designs. Pegasus will probably not record gains as dramatic as those of the immediate past during the period ahead; its success will inevitably attract rivals into the field. But we believe this unit can match, or exceed, the overall rate of corporate gain during the next three to five years.

At present, Imperial's manufacturing operations are scattered among seven separate facilities in the greater Miami area. Early next year, however, all such activity will, along with the headquarters staff, be transferred to a brand new complex, containing approximately 167,000 square feet of production, warehousing, and office space. Over the longer run, the move promises to enhance profits as a result of efficiencies and economies of scale, plus greater use of automated equipment. The company, for example, can sustain a far higher level of volume as a result of increased capacity. In addition, there will be savings on shipments, and controls will be tighter. Short term, however, it's a better than even bet that there will be some dislocations that could throw off profit projections for a quarter or two. It's possible that all will go swimmingly. But so long as there's a chance that

Continued on page 232

REVIEWS OF PREVIOUSLY RECOMMENDED SPECIALS

Felsway Corp. (ASE — 16)



1973-75 Potential Value: 34
Appreciation Potential: 125%
Estimated Dividend Yield: 2.0%
Date Recommended: 9/19/69
Performance Record: —6%
Change in Dow: —4%

CAPITAL STRUCTURE, as of 2/28/70

Debt: $.68 million
Pfd. Stock: None
Common Stock: 1,300,466 shares
Interest on L.T. Debt: $51,000 million
Div'd on Pfd. Stock: None
Net Worth: $8.25 million
Total Capital: $8.93 million
Book Value P/S: $6.34
Working Capital: $6.81 million

①	1968	1969	1970
Earnings P/S	1.16	1.46	*1.35*
Div'ds P/S	.32	.32	*.32*
P/E Ratio	13.3	14.0	
Div'd Yield	2.1%	1.6%	

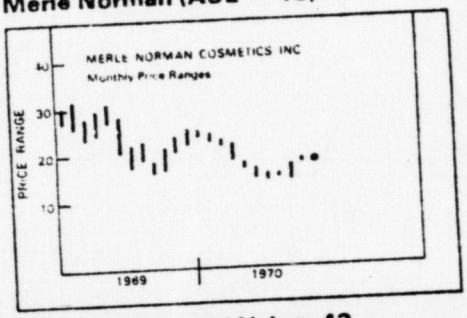
① Fiscal year ending March 1, of following year.

Under the Shoe Town name, Felsway operates probably the largest retail shoe outlets in the U.S. The average unit is about 6,000 to 10,000 square feet, offering the convenience of one-stop shoe shopping for all members of the family. Women's shoes (about two-thirds of a Shoe-Town's sales volume) are displayed unboxed according to size for self service. Through the purchase of factory close-outs, end of season buys from department stores, selective purchases from high-fashion shoe stores who guessed wrong on the current fashion trend, and off-price arrangements when factory business is low, etc., Felsway is able to get its stock on generally advantageous price terms. Since the shoes are displayed according to size, Shoe Town does not have to maintain a complete inventory in each size.

Management is investigating refinements in the Shoe Town concept. It is now negotiating to lease 12,000 to 20,000 sq. ft. supermarkets and variety stores with the intention of converting them into giant Shoe Town units. (Food and variety store operators have found they have to build larger units.) Felsway recently opened a 5,000 sq. ft. Shoe Town mini-unit stocked with high turnover items. Should either of these concepts prove successful, they would open up interesting new avenues of growth.

The uncommonly rapid sales growth over the past few years suggests that Felsway has a very good thing going in its Shoe Town stores. The principal obstacle to steady progress appears to be the always difficult job of properly coordinating personnel, purchasing, and real estate functions to produce a profit gain commensurate with sales growth. For example, this year on sales of $35 to $38 million, against $31 million in fiscal 1969, we estimate that Felsway's earnings will be below last year's $1.46 a share. The 1973-75 projection assumes sales of $55 million and per-share earnings of $2.60. Capitalizing such profits at a multiple of 13 times yields a projected value of 34.

Merle Norman (ASE — 18)



1973-75 Potential Value: 43
Appreciation Potential: 140%
Estimated Dividend Yield: Nil
Date Recommended: 11/22/69
Performance Record: —18%
Change in Dow: —4%

CAPITAL STRUCTURE, as of 3/31/70

Debt: $4.35 million
Pfd. Stock: None
Common Stock: 2,836,800 shares
Interest on L.T. Debt: $.35 million
Div'd on Pfd. Stock: None
Net Worth: $6.51 million
Total Capital: $10.9 million
Book Value P/S: $2.29
Working Capital: $4.87 million

①	1968	1969	1970
Earnings P/S	1.01	1.06	*1.25*
Div'ds P/S	—	.20	*.20*
P/E Ratio	②	21.3	
Div'd Yield	—	—	

① Fiscal year ends March 31st.
② Shares first publicly offered in January, 1969.

The trucking strike which paralyzed the movement of goods throughout many parts of the country earlier this year spilled some wind out of Merle Norman's sails; results for the company's first fiscal quarter (ended June 30) were no better (20¢ a share) than the level reached a year ago. At first glance, this would appear to dampen hopes for a broad full-year gain. But, according to management, that's not at all the case. Quarterly gains through the rest of the year are expected to be quite impressive. During the second quarter, one would anticipate some carryover of demand from the weak first quarter — that is, demand which was not met due to the unavailability of goods. Apparently, however, whatever effects there were were felt during the first quarter — and that's that. Improvement likely past midyear will be honest-to-goodness growth.

Addition of a wig line offers a case in point. Everybody's jumping into this field, but few have the ready distribution network provided by the company's more than 2,400 retail outlets. Management expects that the line of synthetic hair (Dynel fiber) goods will provide as much as $3 million in additional revenues this year. Following a developing trend, the company has added a long-hair wig to the line. (In this industry, virtually all synthetics to date have been of the short-hair variety.)

Merle Norman's expansion goal is to add 300 new studios annually. The first step in this process is to sift through the approximately 6,000 unsolicited inquires which are received every year. About 95% of these are screened out immediately for various reasons. The remainder end up as new Merle Norman studio operators. In the first five months of fiscal 1970, the company added over 140 units, keeping comfortably ahead of its objective.

The company recently launched an operation in Canada which, though still unprofitable, is the forerunner of planned entry into other world markets. Initial targest are the cosmopolitan cities of Europe.

Second-quarter results, which are to be released shortly, will probably show earnings of about 30¢ a share on revenues of $5.5 million. For the full year, profits are likely to reach $1.25 — or more — a share, against $1.06. SO

UPDATING RECOMMENDED ISSUES

Alcoa (NYSE — 56)
Recommended: 9/12/69 at 71

CAPITAL STRUCTURE, as of 12/31/69

Debt: $774.4 million
Pfd. Stock: $66.0 million
Common Stock: 21,503,565 shares
Interest on L.T. Debt: $33.6 million
Div'd on Pfd. Stock: $2.5 million
Net Worth: $1,194.5 million
Total Capital: $1,968.9 million
Book Value P/S: $52.49
Working Capital: $446.0 million

	1968	1969	1970
Earnings P/S	4.75	5.58	*5.00*
Div'ds P/S	1.80	1.80	*1.80*
P/E Ratio	14.9	13.2	
Div'd Yield	2.5%	2.4%	

Alcoa's less buoyant shipments in the context of growing primary aluminum production have been a disquieting factor. Also, ingot exports, previously a strong area, have started to taper off. The automotive strike at General Motors is yet another negative. While the impact has probably not been material so far, things could change if the work stoppage persists for more than two months. Its not surprising, then, that Alcoa shares have dropped by about 10% from their mid-July level. The stock now ranks about average for year-ahead market performance and has superior appreciation potential to 1973-75.

During the first half, production of primary aluminum advanced by 6.9% in contrast to a drop of 1.6% in total shipments. To bring supply into line with demand, Alcoa cut back about 2% of its U.S. smelting capacity. The company has also rescheduled until 1971 the planned startup of two new 50,000-ton potlines. Such moves, while helpful, will add to the company's operating costs a few months hence when aluminum demand is expected to improve and idled capacity is brought back on stream.

Earnings of $2.80 a share for the first half of the year were about 2% under those of last year. In view of the continual tapering off of aluminum demand, third-quarter net is likely to be about $1.00 a share, off 17c. Assuming that the auto strike doesn't persist beyond two months, full-year earnings are estimated at $5.00 a share, an indicated year-to-year decrease of 10%.

Next year, earnings results are expected to snap back to 1969 levels. Positive factors in 1971 include a better U.S. economic climate, which should spur housing construction. This area accounts for about 22% of aluminum's domestic shipments. A strong automotive year also appears to be a good possibility. Finally, anticipatory buying of aluminum prior to the expiration of labor contracts around midyear is expected to be strong.

Anken Industries (OTC — 9¼)
Recommended: 7/24/70 at 6⅝

CAPITAL STRUCTURE, as of 12/31/69

Debt: $1.45 million
Pfd. Stock: None
Common Stock: 1,185,008 shares
Interest on L.T. Debt: $.13 million
Div'd on Pfd. Stock: None
Net Worth: $5.7 million
Total Capital: $7.2 million
Book Value P/S: $4.79
Working Capital: $3.4 million

	1968	1969	1970
Earnings P/S	d.66	.09	*.38*
Div'ds P/S	—	—	*Nil*
P/E Ratio	NMF	92.2	
Div'd Yield	—	—	*Nil*

Anken's earnings moved into the black in 1969 following four years of deficits. The favorable trend was sustained through the first half of this year. We believe that this momentum can be maintained beyond 1970, with earnings growing at a compound annual rate of about 14% for the next three to five years. Despite a good move since they were recommended, the shares rank highest for both year-ahead market performance and appreciation potential to 1973-75.

The key to Anken's recovery is its diversification away from some of its traditional lines to outlets with superior growth potential. For example, the General Photo Products division (50% of sales) now offers a diversified assortment of film and supplies for phototypesetting, a field now growing at an average annual rate in excess of 10%. The Davis division (35% of sales) supplies the kinds of magnetic tape and electrostatic recording paper used by geologists exploring for oil.

Internally generated funds appear to be adequate to fuel the company's growth for at least the next two to three years, excluding major acquisitions. For such purposes additional common shares and newly authorized preferred stock are available.

Microdot (NYSE — 13)
Recommended: 12/19/69 at 22

CAPITAL STRUCTURE, as of 6/30/70

Debt: $48.2 million
Pfd. Stock: None
Common Stock: 4,098,000 shares
Interest on L.T. Debt: $3.2 million
Div'd on Pfd. Stock: None
Net Worth: $29.5 million
Total Capital: $77.7 million
Book Value P/S: $6.64
Working Capital: $37.4 million

	1968	1969	1970
Earnings P/S	1.70	1.95	*1.35*
Div'ds P/S	—	.40	*.40*
P/E Ratio	41.9	19.1	
Div'd Yield	—	1.5%	

First-half profits were 36% below year-earlier results largely because of a lower level of automotive production that caused a decline in fastener shipments, the Teamsters' strike, and declining aerospace orders. The shares, which rank only average for year-ahead market performance, still offer superior appreciation potential to 1973-75 when Microdot should be able to profitably increase its sales of proprietory goods to the aerospace, connector, and electronics components markets.

Our 69c earnings estimate for the second half of 1970 is based upon the assumption that the UAW strike against General Motors will continue until mid-November, keeping pressure on Microdots' profits. Business lost during the fourth quarter is expected to be recovered early in 1971, possibly giving the year an added lift.

Panhandle Eastern Pipe Line (NYSE — 41)
Recommended: 7/3/70 at 38

CAPITAL STRUCTURE, as of 6/30/70

Debt: $538.3 million
Pfd. Stock: $81.0 million
Common Stock: 14,200,655 shares
Interest on L.T. Debt: $30.5 million
Div'd on Pfd. Stock: $1.5 million
Net Worth: $236.7 million
Total Capital: $856.0 million
Book Value P/S: $16.67
Working Capital: NMF

	1968	1969	1970
Earnings P/S	2.79	2.91	*3.20*
Div'ds P/S	1.60	1.60	*1.60*
P/E Ratio	12.6	11.2	
Div'd Yield	4.6%	4.6%	

Panhandle Eastern shares still rank highest for year-ahead market performance. A gas shortage is

expected this year and possibly next. The industry believes it was caused by insufficient incentives to producers for the last few years. That situation is currently being remedied by changes in Federal Power Commission policies, but it will be some time before the new-found gas can be delivered to market. Panhandle Eastern does not look for any significant account expansion for the next two years, but expects to be able to take care of customers already on the books this winter.

A General Motors strike could affect fourth-quarter earnings. Panhandle supplies gas to several utilities which service many of the affected facilities. We are sticking with our per-share earnings estimate of $3.20 but are aware of the possibility of slightly lower results. By 1973-75, with a sufficient gas supply to satisfy ever increasing demand, adequate transportation capacity, and increased contributions from its production subsidiary, per-share profits could reach $4.50. Capitalized at a multiple of 16, such earnings could command a normal average price of 72. SO

Imperial Industries

Continued from page 229

something can go wrong, we prefer to reserve judgment.

Imperial's finances at yearend 1969 were only adequate; the current ratio, was 1.6:1, but working capital was a skimpy 17% of sales, against almost 30% a year earlier. In the interim, the company has taken care of its money needs, securing a long-term $2 million loan from Gulf Insurance and arranging for an extra $1 million credit line that can be taken down as and if needed from local banks. SO

Correction

In the October 2, 1970 edition of Selection & Opinion, some prices and exchanges were scrambled on page 248 of the Industry Analysis of Telecommunications. The correct prices and exchanges are: Burnup & Sims (OTC — 22); Comsat (NYSE — 45); and GT&E (NYSE — 22). We regret the error.

Supervised Account No. 3

At the opening of the market on Monday, October 5, 1970, the Supervised Account No. 3 completed the transactions recommended in the October 2, 1970 issue of Selection & Opinion. The transactions (adjusted for odd-lot differentials were made as follows:

No. of Shares	Stock	Price
	Sold	
2M	Data Process Cv. 5 1/2%, 1987	54 3/4
20	ITT Conv. Pref. "N"	57
	Bought	
35	ABC Comm.	30 3/8
35	Morton-Norwich Comm.	34 3/4

GOOD FAITH

Arnold Bernhard & Co., Inc., publisher of The Value Line Investment Survey and The Value Line OTC Special Situations Service, serves also as the Manager and Investment Adviser of three Mutual Funds and as personal consultant to individual investment counsel clients. Officers and directors, security analysts and other employees of Arnold Bernhard & Co., Inc., and the Company itself and certain affiliated companies under common ownership and control ("the affiliated Companies") may also invest from time to time for their own accounts in securities ranked or reported on in the Services.

In order to minimize conflict of interest, Arnold Bernhard & Co., Inc. imposes the following rules upon itself, its officers, directors, employees and affiliated Companies: –

1. The purchase of a security by any of the above persons or entities is forbidden if the purchase would be made with the intention of selling on a price rise that may be caused by (1) recommendation in one of the Services, or (2) purchasing by one or more of the Funds managed by the Company, or (3) buying by individual investment counsel clients.

2. Information as to (1) what the Services will recommend, (2) what the Funds will buy or sell and (3) what advice will be given to individual clients, is to be held in the strictest secrecy and made known only to those who need to know.

3. If any person subject to these rules finds that one of the Services has especially recommended a particular security for purchase as a special situation, and that person happened to own the security at the time of recommendation, he is prohibited from selling that security for a period of five months after the time of recommendation (if it is a security traded Over-the-Counter) or for three months after the time of recommendation (if it is traded on the New York or American Stock Exchange), even though he may have had no knowledge that the security was about to be recommended.

4. Every officer, director and employee must report every month to the Legal Department of the Company every security transaction that has been made for his own account or for any account he advises, or in which he has any other beneficial interest. The transactions are reviewed by the Company's counsel and its security officer, and violations, if any, are reported to the President. Violations of the Company's "conflict" rules may cost the officer or employee not only his position but his vested interest in the Company's profit sharing and retirement plan as well.

5. Whenever a security in which an officer or director of this Company or the Company itself or any of the affiliated Companies directly or indirectly owns an interest with a cost of more than $5,000 is especially recommended in either of the Services, a legend at the bottom of the page calls the reader's attention to that interest.

6. As a further precaution, the name of the Special Situation which is recommended once every month in The Value Line Investment Survey, and twice a month in The Value Line OTC Special Situations Service, is sent by collect telegram to any subscriber who wishes to have it so. The telegram is sent just before the text of the recommendation is sent to the printer. Although we deplore telegraphic advice, for it is obviously superficial and "tippy", this is the only method we have been able to devise to assure every subscriber, wherever situated, that he will know as soon as anyone else what the name of the Special Situation recommendation is to be, if he wishes to be so informed.

7. When recommendations to buy or sell are made for more than one client, publication or Fund, care is taken that the recommendation will be fairly made available to all concerned. The pattern of executions is under the constant scrutiny of the Company's security officer, one of whose specific duties it is to guard against unfair discrimination, intentional or unintentional. Where executions are effected for two or more clients in the same security, transactions are proportionately divided.

These rules, in essentially their present form, have been in effect in the Company for thirty-five years, except the rule requiring monthly written reports, which has been in force since February 1, 1961, and which has been revised to comply fully with the new reporting requirements of the SEC. The complete set of the current "conflict" rules of this Company, which an SEC Study described as one of the strictest and most detailed of any they had seen, will be sent to any subscriber on request.

ONLY COPY AVAILABLE

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

L

DEFENDANT'S EXHIBIT L

ARNOLD BERNHARD & CO. INC

OFFICERS AND DIRECTORS

SEPTEMBER 1972

Arnold Bernhard -- President

Walter Gershon - Senior Vice President (Research)

Walter Politzer -- Senior Vice President and Chief Operating Officer

Harold Bernhard - Vice President (Finance) and Treasurer

Theodore Zimmerman - Vice President and General Counsel

David E Hershey - Vice President and Secretary

A Van H Ruland - Vice President (Operations)

George F Duberg, Jr - Vice President (Research)

Edward J Cowdery - Controller

Arnold Bernhard	Joan P Bottner
Harold Bernhard	George F Duberg Jr
A Van H Ruland	Samuel Eisenstadt
Jarvis V Bernhard	Allan S Lyons
Walter Gershon	Walter Politzer
Edward J Cowdery	Theodore Zimmerman

JUDGMENT AND COMMITMENT 27a

United States of America vs.

United States District Court for

DEFENDANT: [ ] THE SOUTHERN DISTRICT OF NEW YORK

[THOMAS ZAMMAS] DOCKET NO. ➤ [74 Cr. 987]

JUDGMENT AND PROBATION/COMMITMENT ORDER (AO 245 7/11)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date ➤ MONTH: Sept. DAY: 29 YEAR: 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL [Richard Wynn, Esq.]
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a ~~XXXX~~/verdict of
[ ] NOT GUILTY. Defendant is discharged
[X] GUILTY.

Defendant has been convicted as charged of the offense(s) of **using the mails in a scheme and artifice to defraud.(Title 18, United States Code, Sections 1341 and 2.) and by the use of mail did cause to be issued 1972 issue of Value Line. (Title 15, United States Code, Sections 77q(b) and 77x; Title 18, United States Code, Section 2.)**

as charged in counts 1 thru 12 inclusive

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged & convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **EIGHTEEN (18) MONTHS on each of counts 1 thru 12 to run concurrently with each other.**
Execution of Sentence stayed Pending appeal.; Defendants bail pending appeal continued.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON 9/29/75
THIS DATE

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

CONSTANCE BAKER MOTLEY

Const. Baker Motley

Date 9/29/75

By [ ] CLERK [X] DEPUTY

File

TRANSCRIPT OF TRIAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Before: HON. CONSTANCE B. MOTLEY, District Judge and a Jury
vs.	
WILLIAM ERIC AIKEN, WILLIAM RODMAN & THOMAS ZAMMAS,	74 CRIM. 987
Defendants.	

U.S. DISTRICT COURT FILED SEP 16 1975 S. D. OF N. Y.

New York, July 28,29,30,31, 1975
August 1,4, 1975

STENOGRAPHER'S MINUTES

CLERK'S COPY
RETURN TO COURT REPORTERS
ROOM 803 FOR FILING

hpb

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

vs. :

: 74 Cr. 987

WILLIAM ERIC AIKEN, :
WILLIAM RODMAN and :
THOMAS ZAMMAS, :

Defendants. :

New York, New York.
July 28, 1975 - 2:15 P.M.

Before:

HONORABLE CONSTANCE BAKER MOTLEY, District Judge,

and a jury.

APPEARANCES:

PAUL J. CURRAN, United States Attorney for
the Southern District of New York.
JOHN A. LOWE, Assistant United States Attorney and
PETER SHAEFFER, Esq., Securities Exchange Commission

LOUIS C. PULVERMACHER, ESQ.,
Attorney for defendant Aiken.

MORTON BERGER, ESQ.,
Attorney for defendant Rodman.

ALVIN ENTIN, ESQ., and
LEWIS KIMLER, ESQ.,
Attorneys for defendant Zammas.

(Case called - 2:30 P.M.)

MR. PULVERMACHER: Defendant Aiken requests permission to address the Court.

Your Honor, defendant Aiken would like permission to withdraw his plea of not guilty and enter a plea of guilty to Count 7 of the indictment.

The plea of guilty to Count 7 would be in lieu of all counts of the indictment. There are 14 in the indictment -- 12, rather.

THE COURT: Then he would be offering to plead to violation of the Securities laws, is that right?

MR. PULVERMACHER: 17B, violation of the securities law. There would be no mail fraud charges, your Honor.

BY THE COURT:

Q How old are you, Mr. Aiken?

A Forty years old.

Q How much education do you have?

A I am a college graduate,your Honor.

Q What college did you attend?

A UCLA, your Honor.

Q Have you discussed this case with your attorney?

A Yes, I have,your Honor.

MR. PULVERMACHER: Yes, your Honor.

THE COURT: I am addressing myself to the defendant.

Q Have you discussed this case with your attorney?

A Yes, your Honor.

Q Have you read the indictment returned against you?

A Yes, your Honor.

Q Tell me in your own words what you understand you have been charged with in Count 7 of the indictment to which you are offering to plead guilty.

A Failure to disclose the fact that I received a bribe for making a stock recommendation and register advisory service.

Q Have you given your attorney all of the facts concerning this charge?

A Yes, your Honor.

Q And have you discussed with your attorney any possible defense you might have to this charge?

A Your Honor, there isn't much of a defense.

Q The question is, have you discussed with your attorney any possible defense that you might have to this charge?

A No, your Honor, I didn't specifically.

Q You understand, don't you, when one is charged

by the grand jury with a crime, he may offer a defense to that charge. Do you understand that?

A Yes, your Honor.

Q Did you discuss that with your lawyer?

A Yes, I understand.

Q Are you satisfied that your lawyer has fully considered all the facts in your case and any possible defenseyou might have to this charge?

A Yes,your Honor.

Q Do you understand about pleading guilty to this charge and that the Court might sentence you to a term of imprisonment up to five years?

A Yes, your Honor.

Q And in addition may impose a fine up to $5000?

A Yes, your Honor.

Q And undergoing those maximum possible penalties, do you still want to plead guilty?

A Yes, your Honor.

End 1

Tk 2A jkb

Q Do you feel that any of your constituional rights have been violated in any way in connection with your property, your arrest, or these proceedings?

A No, your Honor.

Q Was any of your property seized?

A No,your Honor.

Q Were you arrested in connection with this charge?

A No, your Honor.

Q Did you make any statement at the time you came in to court, to the United States Attorney or some other law enforcement agency?

A Yes, your Honor.

Q When did you make that statement?

A I believe that was in March 1973.

Q And to whom did you make the statement?

A Peter Shaeffer, on the SEC staff.

Q Now, before you made that statement, were you advised of your constitutional rights?

A Yes,your Honor.

Q And what were you told that your constitutional rights were?

A It was my right to remain silent.

Q What else did he tell you?

A Well, I was told that I could have an attorney

present, your Honor.

Q Were you told that any statement you did make might be used against you?

A Yes, your Honor.

Q Were you told that you could have an attorney present before any questioning began?

A Yes, your Honor.

Q Was your attorney present?

A No, your Honor.

Q Were you told that if you could not afford an attorney, the Court would appoint one for you before any questioning began?

A Yes, your Honor.

Q Are you satisfied that any statement you made at that time was freely and voluntarily made?

A Yes, your Honor.

Q Were you threatened in any way to get you to make that statement at that time?

A No, your Honor.

Q Were you promised anything?

A Subsequently --

Q At that time?

A No, not at that time, your Honor.

Q All right, has anyone now, including your own

attorney, or the United States Attorney, made any promise to you that you would be dealt with leniently by the Court if you would plead guilty at this time?

A No, your Honor.

Q Has any other promise been made to youif you wuld plead guilty at this time?

A I entered an agreement with the Attorney General.

THE COURT: Do you have that?

MR. PULVERMACHER: Yes, I do, your Honor.

(Handed to Court.)

THE COURT: Mr. Lowe, is this the agreement between the Government and the defendant Aiken?

MR. LOWE: I believe it is, your Honor. It should have my signature on it along with Mr. Aiken's and Mr. Pulvermacher's.

THE COURT: Let's file it as part of the record of this plea.

Mr. Clerk, would you put the name and number of the case on that document.

MR. PULVERMACHER: Your Honor, I notice that the page given to the clerk is not the same as I gave to you. There is one page missing.

THE COURT: Well, there was an original and a copy. The copy has only one page.

MR. PULVERMACHER: No, they were all one agreement. The staple has come apart.

THE COURT: They weren't stapled together.

MR. LOWE: Your Honor, I have the original which was marked as an exhibit for purposes of this case, in any event.

THE COURT: Suppose we use that. Suppose we use the original, and then you can have the copy for use at the trial if you would like.

Would you staple these together.

THE CLERK: Yes, your Honor.

BY THE COURT:

Q Mr. Aiken, is this your signature on the petition to plead guilty?

A Yes, your Honor.

THE COURT: And Mr. Pulvermacher, is this your signature on the attorney's portion?

MR. PULVERMACHER: Yes, your Honor.

THE COURT: The clerk is directed to file the petition to plead guilty, and file the agreement between the defendant and the Government.

End 2a

jkal

BY THE COURT:

Q Let me ask you this, Mr. Aiken, were you threatened in any way to get you to plead guilty?

A No, your Honor.

Q Do you understand that by pleading guilty you give up your right to a trial of this charge against you?

A Yes, your Honor, I do.

Q By 12 citizens from this district?

A Yes, your Honor.

Q Or at your election, by the court, perhaps, without a jury?

A Yes, your Honor, I do understand.

Q Do you understand that if you went to trial now you would not have to say anything?

A Yes, your Honor.

Q That the government would have the burden of proving to the jury that you were guilty beyond a reasonable doubt?

A Yes, your Honor.

Q Do you understand that if you went to trial you would have the right to cross examine the government-s witnesses against you?

A Yes, your Honor.

jka2

Q And that you would have the right to call witnesses in your own behalf?

A Yes, your Honor.

Q And understanding all those rights to a trial, you now want to give up those rights and plead guilty?

A Yes, your Honor.

Q Are you under the influence of any drug or alcohol at this time?

A No, your Honor, I'm not.

Q Have you ever been the subject of any psychiatric care or treatment?

A No, your Honor.

Q Is this your decision to plead guilty?

A Yes, your Honor.

Q And are you entering this plea of guilty now freely and voluntarily?

A Yes, your Honor.

Q And as a result of your own reasoning processes?

A Yes, your Honor.

Q Tell me what you did on or about September the 29th, 1972, here in the Southern District of New York, which shows that you are in fact guilty of count 7 of this indictment, the count to which you are now offering to plead guilty?

jka3

A Yes. I caused to have published a stock recommendation on a stock called Power Conversion without disclosing the fact that I had in fact been paid to make the recommendation.

Q And was that mailed to somebody?

A Yes, it was mailed. The publisher is also registered with the Securities and Exchange Commission as investment adviser.

Q Was a copy mailed to First National City Bank at 399 Park Avenue?

A I believe so, your Honor.

Q That is what you are charged with in count 7?

A Yes, your Honor.

Q And that was published in an issue of Value Line Selection Opinion for September, '72, is that it?

A September 29th, your Honor, yes.

Q Which described the common stock of Power Conversion, Inc.?

A Yes.

Q Do you have any questions you would like to ask your attorney or the court before I finally accept your plea of guilty?

A No, I don't, your Honor.

jka4

THE COURT: All right. The court accepts the plea of guilty of the defendant William Eric Aiken to count 7 of indictment 74 Criminal 987.

The day of sentence will be september 22nd at 11 o'clock. Presentence report will be required.

What is the defendant's present bail status.

MR. PULVERMACHER: Freed on his own recognizance, your Honor.

MR. LOWE: The government has no objection to that continuing until the date of sentence, your Honor.

THE COURT: All right, the present bail status will be continued as to the defendant Aiken until the day of sentence.

Anything further. Report to the Probation Department, Mr. Aiken.

DEFENDANT AIKEN: Yes, your Honor.

THE COURT: All right, with respect to the other defendants then we will proceed to trial.

I have from the government proposed questions to put to the prospective jurors. Are there any from the defendants? I have from the government a memorandum of law with respect to the introduction of certain statements on the trial. Is there a memorandum from

the defendants?

MR. BERGER: May it please the court, I have not received the memorandum with regard to the testimony. Probably it was an oversight or it was lost in the mail. Counsel for Mr. Zammas was good enough to show it to me. I would like an opportunity to put in a reply to that memorandum of law.

The defense objects vigorously to the introduction of the discussion between Mr. Perlmutter and Mr. Aiken outside of the presence of his client, and I feel only in very special circumstances is that evidence admissible. Up until the time those conditions are shown to exist and up to the time the court believes beyond a reasonable doubt that those conditions are shown to exist, that testimony is not admissible.

THE COURT: Will we reach this question early in the trial?

MR. LOWE: I believe we will reach it, your Honor, on the testimony of the very first witness. I am almost certain, but I can't be 100 per cent certain of anything, that Mr. Berger was mailed a copy of this memorandum together with the government's proposed voir dire and instructions to the jury.

In any event, I will hand him a copy right

now.

MR. ENTIN: Your Honor, on behalf of defendant Zammas, we received this memorandum on Friday of last week and we are in the process of preparing our response. Hopefully, we will have it before the court tomorrow afternoon.

THE COURT: It's a one-page memorandum.

MR. LOWE: I believe, your Honor, it does nothing more than set forth the support for basic, well-understood, well-established principles of law.

Needless to say, the government would not offer any such statement in the absence of proof of an agency or joint venture relationship which I think will be forthcoming.

THE COURT: Yes, that's what it appears to be, a statement made by the con-conspirator. Mr. Perlmutter is claimed to be an agent as opposed to co-conspirator.

MR. LOWE: Yes, your Honor. In light of the fact there is no conspiracy specifically charged in the indictment, basically he is a co-conspirator in fact, but in most instances that I have been able to discover in cases such as this, where there is no conspiracy charge, the courts usually use the term "agency" but

it means the same.

MR. BERGER: Although I have not had an opportunity to research this I would like to cite cases. United States vs. Cianchitte, 315 F. 2d 584, which is Second Circuit case, 1963, which I have read for other reasons and that case sets forth the specific burden that the government must meet prior to introducing this type of evidence. With regard to that particular type of evidence, I would like an opportunity to submit to the court tomorrow morning a limiting instruction which I will request that the court read to the jury at times that the court believes appropriate in order to protect the rights of the defendants with regard to hearsay evidence which might be admitted perhaps subject to connection and prior to the time that the court believes that the government has proven a scheme and artifice to defraud beyond a reasonable doubt or has failed to prove beyond a reasonable doubt the existence of an agency and has failed to prove beyond a reasonable doubt that the individual against whom that evidence is offered actively and knowingly participated in a scheme and artifice to defraud.

That would be our position with regard to the first six counts to the indictment because of the

fact the scheme and artifice has been alleged to those counts.

With regard to counts 1 through 12 no scheme and artifice has been alleged. In those counts the defendant believes it should be proven to the satisfaction of the court and beyond a reasonable doubt that there has been a concert of action on the part of the individual testifying and the individual concerning whom he is testifying before that testimony is admissible. In addition to that, I would object to the court admitting this evidence even subject to connection because the probative value will be greatly outweighed ny the prejudicial effect that evidence will have upon the --

THE COURT: Mr. Berger, suppose you bring in a memorandum tomorrow morning.

MR. BERGER: Thank you, your Honor.

THE COURT: The government's memorandum refers to the new rules of evidence, Rule 801(e)(2)(D) and (E), and cites recent Second Circuit cases. Suppose you address yourself to that. We will take it up again tomorrow morning.

MR. BERGER: Your Honor, may I bring in a suggested limited instruction?

THE COURT: Yes, your Honor.

MR. LOWE: I agree with every legal position Mr. Berger has taken and I have no objection to limited instructions at the time the evidence is received.

In connection with the proposed voir dire, your Honor --

THE COURT: Just a moment.

MR. LOWE: If I might call your Honor's attention to page 4 of the government's request.

The fourth name from the bottom in the list on that page reads Hentz & Co. It should read H. Hentz & Co. And the third name from the bottom, which reads H. Hentz & Co.,should be eliminated from the voir dire, your Honor.

THE COURT: Is there anything else?

MR. LOWE: Yes, your Honor.

On page 5, counting down five names from the top, it reads "Lief, Werle & Co.," and the next name on your Honor's copy is Marsh, Black, Liebler & Co., Inc. In between those two names the government would request, your Honor, to insert the name Larry Lindsey.

THE COURT: Anything else before the jurors arrive?

MR. LOWE: Yes, your Honor.

THE COURT: That is, with respect to questions --

MR. BERGER: I just have another matter I would like to raise.

MR. ENTIN: I would like to raise an objection, your Honor, to proposed jury question No. 7, found on page 8 of the government's proposed voir dire. The question reads:

"Whether any prospective juror, spouse, child, relative or close friend has experienced the practice of bribery or kickbacks in the business world."

I would suggest to the court that based on the indictment that is presented in this case are are not dealing with a question of kickbacks, we are not dealing with a question of bribery.

The indictment alleges a violation of 77(q)(b), subsection 2, which makes it an offense not to disclose a receipt of gratuity. It makes no mention of it being an offense to receive the gratuity. I

I would suggest the "bribery" as used in this connection or in any connection in this particular case would have a harmful and prejudicial effect on the rights of the defendants. They are not charged with it and any inquiry as to the word "bribery" would be improper.

THE COURT: Does the government have any reply?

MR. LOWE: Yes, your Honor. I think in the very indictment itself the grand jury has found - that in fact what was not disclosed was the receipt of a bribe in some words in the indictment, and I also submit, your Honor, that the question of calling it something other than what it really is, simply because of the technicalities of the federal criminal statutes --

THE COURT: What part of the indictment mentions the word "bribe"?

Tk 2B

hpb-1 20

MR. LOWE: If I might refer your Honor to paragraph 8 of Counts 1 through 6 of the indictment which is on page 3 of the indictment, paragraph 8A refers to the fact that the defendants Rodman and Zammas would and did secretly pay a $15,000 bribe to defendant Eric Aiken in return for which Eric Aiken agreed to publish an article in Value Line, etc.

MR. ENTIN: The statute should be controlling before the Court, your Honor. A bribe is an unauthorized compensation given by one to another. In this particular case the statute specifically authorizes the kind of compensation dealt with here. The only thing the statute imposes is a duty to disclose, but the compensation is not unauthorized whereby a bribe is an unauthorized compensation.

The statute says that Mr. Aiken or anyone else can take all the bribes he wants provided he discloses same and as such calls it a gratuity, does not refer to it as a bribe and does not make it illegal.

MR. LOWE: I might point out, your Honor, the statute does not say a bribe is permissible. It just simply doesn't punish the bribe itself.

I would point out that the penal law of the State of New York will punish the crime of commercial

bribery in this particular instance.

THE COURT: Did you have anything to say on this point, Mr. Berger?

MR. BERGER: Yes, your Honor. I would like to joint the motion of counsel of defendant Zammas.

In addition to that, for all future objections and motions, unless the defendant Rodman's counsel states otherwise, I will join in all other motions that will be made and all those that have heretofore been made.

MR. ENTIN: That is also the position of the defendant Zammas with respect to the objection made by defendant Rodman.

THE COURT: We have disposed of all motions?

MR. ENTIN: No,your Honor. There were motions to dismiss for unconstitutionality that your Honor took under advisement several months ago, and didn't rule upon.

THE COURT: What was the essence of that motion?

MR. ENTIN: The essence of that motion, your Honor, is that it is so broad and undefinite it does not reasonably apprise an individual such as Mr. Zammas of the nature of the conduct.

There was an additional memorandum attached responded to by Mr. Lowe.

hpb-3

THE COURT: That motion is denied.

Any other motions?

MR. BERGER: May it please the Court, I would like to make a motion at this time which I could not --

THE COURT: Let's not make any new motions. I asked for any pending, undisposed motions.

MR. BERGER: Your Honor, this is not a pending motion.

THE COURT: Are there any that you have in mind?

MR. BERGER: I would like a motion which I would appreciate the Court taking under advisement and reserving until the close of the entire case. I would like to make that motion now and asking for a ruling would require a preliminary hearing which I do not believe should be held to delay this trial.

I believe that all of the evidence concerning this motion will come out during the trial and I would like to perfect my record.

But, by making the motion and having your Honor reserve decision, if I may -- at this time the defendant Rodman moves to dismiss the indictment based upon the fact that the prosecution in this case is discriminatory and selective, that the defendant Rodman has been selected by the Government to be indicted in this case for the

hpb-4

purpose of harassment and for the purpose of piecemeal indictments because another indictment is now pending, it is before a grand jury, which would include the facts in this case, and I feel that this indictment violates defendant's Fifth Amendment privileges, it is a violation of due process of law, violation of equal protection.

I would just cite the cases that I intend to rely on --

THE COURT: You are going to have to write that motion out. Time for making motions directed to the indictment has long since passed. YOu write that out, support it with points and authorities and I will consider it, but this is not the time to be making motions directed to the indictment, Mr.Berger.

MR. BERGER: Thank you, your Honor. The reason for my lateness --

THE COURT: Let's retire to the robing room. The jury is coming in.

(In the robing room.)

MR. BERGER: I would like to make one more request, that before any of the jurors come into the courtroom, that any prospective possible witness in this case be directed to leave the courtroom and that during the balance of the trial either the defense or the Government

would not knowingly have any witness present.

THE COURT: Are there any witnesses in the courtroom?

MR. LOWE: Unless Mr. Aiken remained, which I believe he didn't, I know of no witness in the courtroom.

THE COURT: Any defense witnesses?

MR. ENTIN: No, your Honor.

MR. BERGER: No, your Honor.

THE COURT: I am making the announcement when I go out. We will proceed with the selection of the jury.

MR. ENTIN: Your Honor hasn't ruled on the motion with regard to the jury instruction.

THE COURT: What I will do in that connection is ask whether any prospective juror has experienced or has been involved in any unlawful gratuity, bribery or kick-back in the business world.

MR. LOWE: Your Honor, might I suggest the verb be "experienced any" because of the potential Fifth Amendment problem of asking whether they were involved in it. That is why I worded it the way I did, because I thought there would be difficulty asking people whether they were involved in, and whether they experienced it is something they would know about without having been involved.

THE COURT: I think in order to avoid that problem, we should probably ask them whether they have actually been involved in any proceeding.

MR. LOWE: Your Honor, the thrust of the question was to discover any person whose experience may have been that there are such things in the business world, and from either of our points of view, such a person may be a problem in light of the fact that they may either have an unduly strong antagonism toward that practice from the defense point of view or from the Government's point of view they may have an attitude many people have that business is business, and this is the way business is done, who cares.

Either possibility existing, I think the question of --

THE COURT: Maybe that would be the best way, to ask them whether they have any strong feeling about business world practices that may involve kickbacks or briberies or gratuities.

MR. ENTIN: Your Honor, for the record, I object specifically to the word "kickback" because that is certainly not used in this particular case at all.

THE COURT: It is related.

MR. ENTIN: I object to the word "bribery"

hpb-7

and I will let that be a continuing objection throughout the trial.

THE COURT: YOu have a continuing objection. I am going to ask them whether they have any strong feelings one way or the other about business practices or other practices, which may involve unlawful gratuities, bribery or kickbacks.

MR. BERGER: Your Honor, what will your practice be with regard to hours?

THE COURT: We are just going to select a jury today, and start tomorrow morning.

MR. BERGER: And you want us here at 9:00 or 9:30?

THE COURT: Ten o'clock.

With respect to the challenges, the defendants have ten, and the Government has six.

How long is the trial apt to take?

MR. LOWE: I am guessing it will probably run into next week. I would guess between five and seven trial days for the Government's case.

MR. KIMLER: We have anticipated three weeks for this trial.

MR. ENTIN: I would say between seven and ten days.

End 2B

(In open court.)

THE COURT: Before we proceed, are there any prospective witnesses in the courtroom?

(No response.)

THE COURT: All right, let's proceed.

(Impaneling of the jury was begun.)

(A jury and two alternates were duly impaneled and sworn.)

THE COURT: All right, ladies and gentlemen, in just a few moments we are going to recess until 10 o'clock tomorrow morning. But before we do so, I want to give you some preliminary instructions.

Now, as the jurors in this case, as you must well know by now, it is going to be your exclusive function to decide the guilt or innocence of the two defendants who are on trial, based solely upon the evidence presented here in court.

Now, in order to perform that function as jurors, it is going to be necessary for you to pay careful attention to the testimony and other evidence as it comes in during the course of this trial.

Now, obviously, if you have not been paying attention to the witnesses as they have testified or to documentary evidence as it has been received in evidence, you will not be able to perform your function very well. And I'm sure that each of you wants to give the paeties who are now on trial that same fair trial which you would expect if you were involved in a lawsuit.

So the first instruction is to pay careful

attention while you are in court to the testimony and other evidence.

Now, we know that you can't pay attention indefinitely, so that in addition to the usual luncheon, which will usually be at 12:45 until 2 o'clock, we will take a morning recess and an afternoon recess so that you can relax and not have to concentrate.

But while you are in court, please pay careful attention. Please do not let your mind wander while the evidence is being received, and please do not fall asleep or anything like that which would indicate that you are not paying attention.

Now, as I told you, and as you know, this is a criminal case, and that means that the government has the burden of proof, and that is to prove the defendants guilty of each charge made against them in this indictment.

As I pointed out earlier during the course of the questioning, a defendant in a criminal case does not have to prove his innocence. A defendant in a criminal case is presumed to be innocent, and this presumption of innocence remains with a defendant throughout the entire trial, even when you retire to the jury room to deliberate.

Now, this presumption of innocence is removed only if and when, after your deliberations in the jury room, you come to the conclusion that the government has sustained its burden of proof, and that is to prove a defendant guilty of a particular charge made against him beyond a reasonable doubt.

As I told you, the indictment consists of several charges against the defendants and they are grouped essentially into two parts, the first dealing with an alleged scheme to use the mails to defraud through the use of this article and payment of a bribe to write the article, and the second relating to a violation of the federal securities laws which requires the disclosure of the payment of a sum in connection with the sale of stock.

And as we proceed to trial you will hear more about those charges in detail in the opening statement by the government.

I want to remind you again that an indictment is not proof or evidence. It is merely an accusation made by a grand jury, and an indictment is returned pursuant to a procedure which we employ in our system whereby persons are merely accused of crimes and then after they are so accused they are brought into court

where their guilt or innocence is then determined by a petit jury or a trial jury such as you are.

At the end of the trial, that is, after all the evidence is in and after the lawyers on both sides have had an opportunity to make closing statements or summations to you, it will be my duty to instruct you as to the law applicable to this case.

During the course of the trial it will be my responsibility to rule on motions and objections made by the lawyers on both sides. My rulings on these motions and objections should not concern you because they have to do with questions of law, and my ruling on any motion or objection is not to be construed by you as an indication that the court or the judge feels that the charges are true or not true or that the defendants are guilty or innocent, because they have to do with questions of law and not questions of fact which are within the province of the jury, and it is only for the jury to determine whether a defendant is guilty or not guilty.

Now, again, your job is to focus on the evidence in a case consisting of three things:

First, the testimony which you will hear from witnesses who are going to take the witness stand

right here before you so that you can see them and hear them and observe them while they are testifying.

And the evidence in a case consists, secondly, of any documents or other clients which are actually received into evidence.

And, finally, the evidence in a case consists of any agreements or stipulations which the lzwyers might enter into as to certain facts which need not be proved by calling witnesses.

So those three things, testimony, exhibits and stipulations, constitute the evidence in a case.

Now, all of that is to emphasize that statements made by the lawyers during the course of a trial, whether in the opening statements which you will hear in the morning, at least by the government, or during the course of the trial, or during the summations, is not evidence. Similarly, any statement made by the judge during the course of the trial is no evidence.

As the evidence comes in you will want to keep an open mind until you have heard the whole case. For that reason you must refrain from discussing the case at any time with any person for any reason. That means that you must not discuss the case among yourselves until you have finally retired to the jury room to

deliberate, and that is after all the evidence is in, after the lawyers have had an opportunity to sum up, and after the court has instructed you as to the law applicable to the case. Then and only then are you permitted to discuss the case among yourselves.

Also, you should not discuss the case with your family or your friends when you go home at night because if you do that, the first thing you know somebody will start telling you about what they read in the newspaper or what they saw on television or what they heard about some other case, and although you do not intend it, those discussions may influence your judgment here, and as I've told you repeatedly now, your judgment in this case must be based solely on the evidence presented in this case and not on what somebody heard on the television or read in the newspaper.

So please do not discuss it when you go home at night. Please do not discuss it among yourselves. Please do not talk to anyone about this case. If anyone should approach you in the hall, or should you run into somenody involved in this case, please do not speak to them about this case. Please do not speak to anyone.

Now, there is a cafeteria in this building

which is for the use of the employees in this building and U. S. attorneys eat in that cafeteria, so no jury is to be found eating in the cafeteria in this building. When the lunch hour comes you have to eat in a restaurant outside or bring your lunch to the jury room, but you are not permitted to go to the cafeteria where you are apt to run into U. S. attorneys or others discussing cases.

You are not to read any newspaper stories which may appear in the newspapers concerning this case. Now, I don't know whether there are going to be any such newspaper stories or radio or television reports, but you are not to read anything or listen to any report about the case on the radio or the television. Now, if you should do so inadvertently, when you come in in the morning, please do not tell your fellow jurors about it, but let me know immediately.

Should anyone approach you about this case or call you about this case or try to speak to you about about this case, don't tell that to your fellow jurors either, but let me know immediately.

As I've said, we are going to recess now until 10 o'clock tomorrow morning. And at that time the trial will commence with an opening statement by

the government's counsel, and as I have told you, the government has the burden of proof in a criminal case; the defendants don't have to say anything. But on the other hand, they may elect to make an opening statement.

I want you to listen carefully to the government's opening statement because they will give you in that statement, or he, Mr. Lowe, will give you in that statement, an outline of what he hopes to prove. And I want to caution you again that statements made by lawyers are not evidence. He will only be telling you what he expects to prove through the various witnesses who will testify and the other exhibits which he will offer, and if received in evidence. But it will help you to follow the evidence as it comes in if you listen to the opening statement.

And of course the government cannot put on its case all at one time. It will come in in bits and pieces through various witnesses and various documents.

So the opening statement is just a general outline of what the government expects to prove.

If you have any questions relating to your comfort or convenience, if you will take them up with

our clerk here he will try to help you, and if he can't, he will take them up with me.

Now, again, we are going to recess now until 10 o'clock tomorrow morning. And before you go I will ask the clerk to show you to the jury room so that when you come in in the morning you will report to the jury room and remain there until the clerk tells you to come in.

During the course of the trial there will be times when I will have legal matters to discuss with the lawyers out of your presence, and sometimes therefore you will be waiting in the jury room, but I want to remind you that patience is a very important quality in the administration of justice and in seeing that justice is done. So if you are sitting in there, just be patient. You will know that we are discussing legal problems and not just wasting your time.

All right, with those preliminary instructions then I will let you go now until 10 o'clock tomorrow morning. But please remember, do not discuss the case, do not read any newspaper stories about it or listen to any radio or television comments about it.

All right. Will you follow the clerk

now to the jury room.

(The jury left the courtroom.)

THE COURT: All right, gentlemen, as I indicated, we are recessing until 10 o'clock tomorrow morning, but we have this preliminary matter, Mr. Berger. I gave you an opportunity to submit something in opposition to the government's memorandum with respect to the admission of certain testimony, so if you will get that in at 9:30 tomorrow morning, I'd appreciate it so I can glance at it before we --

MR. BERGER: Your Honor, I believe that the government, Mr. Lowe, agreed with my statement of law with regard to that memorandum.

THE COURT: That is right. You were to bring in a --

MR. BERGER: Limiting instruction.

THE COURT: All right. Get that in tomorrow morning at 9:30.

MR. LOWE: Before we break up I would like to hand up to your Honor two exhibits which, although your Honor would obviously not be able to rule on them at this point, I believe if your Honor were to familiarize yourself with the materials prior to the testimony of the witnesses referred to therein, the

government will argue at the appropriate point that these two exhibits which, for the record, are marked Government's Exhibit 3501D for identification and 3510B for identification, which relate to two prospective government witnesses, namely, Mr. Aiken and Mr. Stanley Perlmutter, are not appropriately 3500 material, so I thought perhaps, since they will both probably be on the stand tomorrow, your Honor might wish to read them, and perhaps we will waste less time ruling on the issue of whether these particular portions of their testimony should be turned over or nto.

THE COURT: All right. Hand them up.

Have you turned over to the defendants the other 3500 material relating to these witnesses?

MR. LOWE: Only one of them. I was about to hand them the rest as we departed tonight.

THE COURT: All right. Let's put on the record in the morning then what you have turned over to them by way of 3500 material.

MR. LOWE: Certainly, your Honor.

THE COURT: Yes, Mr. Berger.

MR. BERGER: Your Honor, I'm wondering if the government would tell us the evening before which witnesses they intend to call the following day.

jka

MR. LOWE: To the extent that we have 3500 material, we will always be turning it over not later than the evening before the following day. To the extent that we do not, I see no reason to tell you anything about who a witness may be, if we don't have anything to hand to you.

THE COURT: Does the government have any requests of charge?

MR. LOWE: We do but they are not prepared completely.

THE COURT: Gentlemen, you will have until Wednesday morning at 9:30 to submit any requests of charge. They should be brought to the trial when you come up.

All right. If there is nothing further, we will recess then until 10 o'clock tomorrow morning. And you can send up your instructions to my chambers by 9:30, Mr. Berger.

MR. BERGER: Yes, your Honor.

(Adjourned to July 29, 1975, at 10:00 a.m.)

CLERK'S COPY
RETURN TO COURT REPORTER
ROOM 803 FOR FILING

UNITED STATES OF AMERICA

vs.

74 Cr 987

WILLIAM ERIC AIKEN, et al.

New York, July 29, 1975,

10:00 .m.

Trial resumed.

- -

(In open court.)

THE COURT: Do you have something, Mr. Berger?

MR. BERGER: No, your Honor.

THE COURT: I have a note from Martha Nayphe which reads as follows:

"1. How late in the day will we be here (for personal plans and commitments)?"

Ordinarily we would recess at 4:30 is the answer to that.

"2. In order to advise my supervisor at my work, how long (estimate) will we be here beyond this week perhaps?"

I can't say how long it would take. Perhaps not longer than next week, but we never know in a criminal case.

All right, mark that Court's Exhibit 1.

(Court's Exhibit 1 was marked.)

JUROR NO. 11: Is there a strong possibility it might go into a second week.

THE COURT: I can't say.

As I told you, ladies and gentlemen, last evening when we recessed, the trial would commence this morning with an opening statement by government's counsel. I want to remind you again of something I said last night, and that is the statements made by lawyers are not evidence. The government is required to make an opening statement to advise the court and the jury of what it hopes to prove, and to indicate how it hopes to prove it, and that's the purpose of the opening statement, to tell you what the indictment claims and what the government hopes to prove with respect thereto.

So you listen carefully to the government's opening statement because, as I have said, the government can't put on its case all at once. But the opening statement will give you sufficient information about the claims made in the indictment to enable you to follow the evidence as it does come in piece by piece from the various witnesses and documents.

With that in mind, is the government ready

to proceed?

MR. LOWE: The government is ready, your Honor.

THE COURT: You may proceed, Mr. Lowe.

MR. LOWE: Thank you, your Honor.

Counsel for the defendants, ladies and gentlemen of the jury:

This is a case about corruption, corruption in one of the most important institutions of the United States -- the press. An institution that is so important that it's very right to exist is protected by the United States Constitution.

In this case you will learn how one man, a man named Eric Aiken abused the constitutional privilege he enjoyed as a member of the free press by accepting a $15,000 bribe from the defendants in this case, Thomas Zammas and William Rodman, in return for writing and publishing a favorable article known as Power Conversion, Inc.

Back in September of 1972 Mr. Aiken was the editor of a section of the Value Line Investment Survey known as Selection and Opinion. That is a magazine which publishes, among other things, supposedly objective, unbiased, expert opinions on the worth of

various securities as investments.

As the editor, Mr. Aiken was the final authority on what got published and what was said about any particular stock.

At this same time the defendants who are on trial before you, Mr. Zammas and Mr. Rodman, were trying to promote this stock, Power Conversion; they were trying to encourage the investing public to buy it and they were dealing pretty extensively in the stock themselves.

In order for you to understand the nature of the fraud which is the core of this case, let me give you an example based on something that may be more familiar to a lot of you and something as seemingly esoteric as investment advisory service.

Some of you must be familiar with the publication called Consumer Reports. That is a magazine that publishes comparisons among various brand names of the same product and comes up with recommendations as to which is better than the other.

Suppose, for example, you wanted to buy an air conditioner. Unless you are an expert on air conditioners, you are likely to go to this magazine and look up their section on air conditioners and see whether

their expert staff thinks that General Electric is better than Carrier, or Fedders or some other brand.

As a consumer you would be relying on the expertise and the independence and the objecttivity of the staff of the Consumer Reports' publication.

MR. ENTIN: Your Honor, the purpose of the opening I believe is to establish what the government intends to prove. I siggest this is improper opening.

THE COURT: I believe Mr. Lowe is explaining to the jury what an investment publication of this nature is for the benefit of lay members of the jury, as to what an investment publication is. He can tell them that.

MR. ENTIN: Your Honor, he is talking about consumer reports.

THE COURT: He is giving them an analogy and he is permitted to explain to the jury what an investment publication or counseling publication is. That is something which is not generally known.

All right, proceed.

MR. LOWE: Thank you, your Honor.

When you look up the air conditioning in the Consumer Reports you are relying on what they say to help you form an educated judgment as to what air

conditioner you should buy. And that is the kind of advice you can't get by looking at the advertisements, because they are put out by the people who are trying to sell the air conditioners and are trying to put it in the best possible light.

An investment advisory service, like Value Line, is in many ways like Consumer Reports. An investor who is deciding when to buy a particular stock is really in a different position. Sometimes you can go to the store and get the air conditioners and sometimes even try it out. But a stock certificate is a piece of paper. You can't really inspect it, you can't try it out. In order to make a judgment whether to buy a particular stock the investor must rely on various materials that are published about the company that issues the stock, about its business, it's financial condition. Most of the material that is available to the public generally is published by the company itself. Sometimes an investment advisory service, whose business is to go out and examine particular securities and write about them for the benefit of the investing public, will decide to write about a particular stock and people who regularly invest in stocks will read these things and use the supposedly objective, unbiased

opinion of the experts who work for the investment advisory service to help them decide whether they should buy a particular stock.

He is relying not just on their expertise but also on their integrity, their objectivity, on their independence, and he is paying for it because he pays to subscribe to the service.

When the man who edits and writes and publishes an article about a particular stock, in this case Power Conversion, and does so after having been promised $15,000 by people who are interested in selling stock, the people who subscribe to the service are defrauded because they are not getting the kind of objective opinion they are paying for.

It is just as much a fraud as if General Electric paid off Consumer Reports to report on their air conditioner favorably. The public is deceived because they are being led to believe they are getting something other than what they are really getting. That's what this case is about.

An opening statement such as the one I am making to you right now is somewhat like the picture on the cover of a jigsaw puzzle box. The picture on the box, when you dump out all the little pieces, you

have some sort of a guide to tell you how to put the pieces together properly.

In most cases and in this one it's really impossible for one witness alone to tell the entire story of what happened. The whole story has to be pieced together just like a jigsaw puzzle, from the testimony of many witnesses and various documents that you will get to see later on.

The purpose of the opening statement, just like the picture on the puzzle box, is to help you put those pieces together as you see them.

The government will prove during the course of this trial that these defendants, William Rodman and Thomas Zammas, during the summer of 1972 and on into the fall, were promoting the stock of Power Conversion for sale to the public. The evidence will show that in order to assist these promotional efforts they were engaged in, Mr. Zammas contacted a friend of his by the name of Stanley Perlmutter.

Stanley Perlmutter, among other things, was a friend of Eric Aiken. Eric Aiken, you will learn as the trial progresses, had a history of doing this. You will learn power conversation was not the first stock he wrote up for a bribe, nor was it the last. Stanley

Perlmutter also had a history. Stanley,being a friend of Mr. Aiken, from time to time would have people approach him for the very purpose f going to Mr. Aiken and asking him would he be willing in this particular instance to take a bribe to write up a particular stock. Mr. Perlmutter of course didn't do this for free; he took a piece of the action, he shared the briges with Mr. Aiken.

Well, as was his usual habit, after Mr. Zammas spoke to Mr. Perlmutter, Perlmutter contacted Aiken, told him Mr. Zammas had a proposition for him, that he was willing to pay him some money to do a writeup about Power Conversion stock.

Aiken, you will learn, initially refused to do the deal. Eventually Perlmutter, and perhaps his own greed, prevailed upon him and he at least agreed to meet with Mr. Zammas to discuss whether or not the deal would be done. So a meeting was arranged for an evening in September of 1972, took ;lace at a restaurant here in Manhattan on East 41st Street called La Fortuna, not very far from the office of the Value Line publication where Mr. Aiken worked.

Tk 2B

rmb-1

The evidence will show that at that meeting, which was attended by Mr. Aiken and Mr. Perlmutter and the defendant here, Mr. Zammas, Zammas offered Aiken $15,00 in cash, plus sort of an option deal on about 20,000 shares of Power Conversion stock in return for Aiken publishing an article about Power Conversion in the Value Line publication, of which he was the editor.

There was some discussion about whether or not the deal should be done and after Zammas offered Mr. Aiken some guar ntees that he would indeed be paid when the article was published, be paid the bribe, that is, Aiken agreed to publish an article.

Part of the g-arantee that Mr. Zammas offered involved some money up front, as they say. So after dinner that night and after Mr. Perlmutter had left, Zammas and Aiken went to an apartment at 35th Street and Lexington Avenue in Manhattan.

At the apartment Zammas gave Aiken the first installment of the bribe, $1000 in cash in $100 bills. Zammas also gave Mr. Aiken three stock certificates representing a total of 800 shares of Power Conversion stock. These stock certificates it was understood were to be held by Mr. Aiken as security for the payment of the remaining $14,000 of the bribe.

rmb-2

All that means is that if he didn't get paid he could sell the stock and get his money that way.

So Mr. Aiken wrote the article and he got it published in the September 29, 1972 issue of Selection and Opinion. When copies of the article were ready, Mr. Zammas and Mr. Aiken had a telephone conversation in which Aiken reported that the job was done and they agreed to meet for the final cash payment.

The evidence will show that on the night of of September 28, 1972, Mr. Aiken and his fiance, who is now his wife, Mr. Zammas and a lady bythe name of Stephanie Palumbo, who is also known by the nickname "Dusty," met at the Ground Floor Cafe in the CBS building on West 52nd Mtreet here in Manhattan.

I guess they ordered something to eat and made some small talk for a while and after some time had passed, Mr. Aiken and Mr. Zammas excused themselves from the table and went to the men's room.

In the men's room they sort of exchanged envelopes. Mr. Zammas gave Mr. Aiken an envelope with $14,000 in cash in it and Mr. Aiken gave Mr. Zammas an envelope with several copies of the article that he had just published.

Then there was some further conversation in which Mr. Zammas attempted to get Mr. Aiken to use

whatever influence he had to help him find a place to sell off temporarily some 25,000 shares of Power Conversion stock.

WhileZammas and Aiken were meeting at that restaurant, ladies and gentlemen, copies of Selection and Opinion were being mailed out to over 42,000 subscribers to that publication, who of course were not told that the article which recommended the purchase of Power Conversion stock had been bought and paid for. They were defrauded, therefore; they bought and paid for an independent, unbiased, objective opinion of the worth of that stock and what they got was a paid for advertisement.

They were not the only ones who were defrauded; so were the owners of the Value Line publication. These people who sell this publication and who also engage in the management of mutual funds have very little to sell other than their expertise and their reputation.

When one of their employees takes a bribe to tout a stock in their publication, they are being defrauded because they are being hurt in one of the few things they have to sell and that is their reputation.

The mailing that I referred to of the article to the subscribers is the basis for Federal jurisdiction in this case. That is why we call the first set of charges mail fraud and that is why the second set of

rmb-4

charges, which involves a violation of the Securities Laws, requires in it that in some way the mails be used because that is a necessary element for Federal jurisdiction.

Apart from a few details which you will hear as the case progresses, that is pretty much the story of what happened out front and at this point you may, or perhaps even more than may, are probably asking yourselves what about WilliamRodman, what is he doing here?

Obviously Rodman was not the front man for this deal. Nevertheless, the evidence will show that he was very much involved. At the time these events took place Mr. Rodman was what is known as a trader, a man who sits at the telephone and buys and sells stock. He was a trader for the brokerage firm known as C.I. Oren & Company and that firm, through Mr. Rodman, was making a market in Power Conversion stock.

That was a term in the securities industry, ladies and gentlemen, which you will learn means that they were holding themselves out as buyers and sellers of Power Conversion stock, advertising themselves as willing to buy at a particular price, willing to sell at a particular price, and in general conducting a market, dealing in the stock.

The evidence will also show Mr. Rodman was

working very closely with Mr. Zammas in promoting this stock.

WhileZammas was out in front negotiating the deal with Mr. Aiken, he was also reporting to his partner Rodman backstage.

A witness will testify that while he was in the same apartment at 35th Street and Lexington Avenue, where you will learn the initial down payment on the bribe was made, he heard Mr.Zammas and Mr. Rodman discussing paying Mr. Aiken money for publishing the article about Power Conversion.

You will see that the stock certificates Mr. Zammas delivered to Mr. Aiken as the security for the payment of the bribe were registered in the name of William Rodman as custodian and on the back there is William Rodman's signature.

In addition, several witnesses will testify that Mr. Rodman told them that he had paid money to get that article published.

Finally, you will learn that Mr. Rodman used the article as a tool in an attempt to persuade someone to purchase a substantial number of shares of Power Conversion stock and that is what Rodman is doing here.

The evidence will show that although he played

rmb-6

a less active role, he was very much involved.

Before I conclude these opening remarks, I want to say one thing to you about the witnesses you are going to hear. Many of the witnesses that the Government will call in this case are themselves crooks. They are people who were involved in the crime charged in this case or involved in other fraudulent criminal activity in the securities industry. These people, you will learn, have made agreements with the Government of the United States, agreements whereby in return for their coming forward and tellint the truth, the Government has agreed to limit the prosecution of their crimes.

You may not like these people and you certainly wouldn't want them to be held up as models for your children to model their lives on, but when you consider their testimony, consider the fact that the kind of crime charged in this case, fraud, is not committed by nice people. Con artists do not perpetrate their frauds out on center stage, in a spotlight for all around to see.

MR. BERGER: Your Honor, I feel at this point that this is not a proper opening statement, going into the reason the Government uses certain types of witnesses. This is appropriate for closing argument.

THE COURT: Well, I think the Government can

rmb-7

tell the jury that certain witnesses have agreed to testify for the Government in exchange for consideration. If that is what you are doing, Mr. Lowe, that is permissible, but let's not extend it.

MR. LOWE: Certainly, your Honor. Keep in mind that the only people who know what happened in a fraudulent scheme are people who are crooks themselves.

I urge you to pay particularly careful attention to all of the evidence that comes in in this case. It is all very important, as is the case itself a very important case, for everyone who is involved.

When the evidence is all in, hopefully some time next week, I am sure that you will be satisfied beyond a reasonable doubt that both of these defendants are guilty as they are charged.

Thank you.

THE COURT: Thank you, Mr. Lowe.

Does either defense counsel care to make an opening statement at this time?

MR. BERGER: The defendant Rodman reserves its opening statement.

MR. ENTIN: Defendant Zammas reserves opening statement.

MR. LOWE: Your Honor, might we approach the

rmb-8

bench to get an elaboration of that announcement?

THE COURT: Yes.

(At the side bar.)

MR. LOWE: As I understand the rules, the defendants may make an opening statement at this time. If they choose not to do so, they waive it. I don't understand the rules to permit them to reserve it to be made at a later time.

MR.BERGER: I understand the rule to be that we may reserve our opening argument due to the fact that as the defense has no burden of proof whatsoever, at this stage of the proceeding it doesn't have to show what it intends to prove, but after the Government puts its case in it may be obligated to come forth with some proof and until that point arises there is no burden on the defense to make an opening statement. The opening statement, therefore, is not waived.

THE COURT: The Court will permit the defendants to make their opening statement after the Government's case is in.

(In open court.)

THE COURT: The Government may commence by calling its first witness.

MR. LOWE: The Government calls Stanley Permutter.

S T A N L E Y P E R L M U T T E R, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

MR. LOWE: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Perlmutter, what was your occupation during 1972?

A I was a registered representative.

Q And where did you work?

A Continental Securities in Philadelphia.

Q What was Continental Securities?

A An over-the-counter brokerage house.

Q Can you tell us what is a registered representative?

A A registered representative is one who buys and sells stocks for his customers and also does basically other functions that his firm may ask him to do such as underwritings or whatever.

Q Mr.Perlmutter, have you entered into an agreement with the United States Government, particularly with the United States Attorneys for the Southern District of New York in connection with your testimony here today?

A Yes, I have.

Q I am showing you Government Exhibit 5A for identification. Can you identify that document?

A It is the agreement that I have with the Government.

Q Does that contain your signature?

A Yes, it does.

Q Can you identify the other signatures on the document?

A John Lowe, which would be you, and my attorney,

hpb-2 Perlmutter-direct

MartinGarbus.

MR. LOWE: The Government offers Exhibit 5A, in evidence.

THE COURT: Any objection to that exhibit?

MR. ENTIN: None from defendant Zammas, your Honor.

MR. BERGER: None from defendant Rodman, your Honor.

THE COURT: Let it be received.

xxx (Government Exhibit 5A was received in evidence.)

MR. LOWE: Your Honor, I would like to read portions of it to the jury, if I may.

THE COURT: All right.

MR. BERGER: Your Honor, we object to the reading of the exhibit to the jury. The jury has a right to see the entire exhibit. If Mr. Lowe wishes to pass it around. Otherwise, I believe the witness should testify withregard to what he believes his deal was. I think it would be highly prejudicial to read parts of the exhibit to the jury at this time.

THE COURT: Overruled.

MR. LOWE: The caption, ladies and gentlemen, is "Memorandum of Agreement," dated July 17, 1975, and

bears the various signatures you have heard about.

(Mr. Lowe read to the jury from Government Exhibit 5A in evidence.)

That is all, Mr. Berger.

MR. BERGER: Thank you. Your Honor, at this time I would request an instruction to the jury that although this exhibit is in evidence, it is not evidence against any of the defendants inthis case; it is strictly the agreement between the Government and the witness Mr. Perlmutter, but it is not to be considered as evidence in this case, any of the statements or admissions made by Mr. Permutter in that document shall not be considered evidence against any of the defendants on trial today.

THE COURT: Yes. The witness is here to testify with respect to any involvement with these defendants and the document which has been read, ladies and gentlemen, is his understanding with the Government as to what will be done with respect to any criminal activity in which he, the witness, has been involved.

MR. LOWE: May I continue, your Honor.

THE COURT: Yes, you may.

BY MR. LOWE:

Q Do you know the defendant in this case, Thomas Zammas?

A Yes, I do.

Q Do you see him here in court?

A Yes, I do.

Q Would you point him out for the record, please?

A He is directly to your left on the end of the table.

MR. LOWE: Mr. Entin, do you acknowledge this man has identified your client?

MR. ENTIN: I think the record speaks for itself. I am under no obligation --

THE COURT: It is customary as the U. S. Attorney suggests that defense counsel, for the record the defendant has been identified properly.

MR. ENTIN: We will concede that identification.

Q Where and when did you first meet Mr. Zammas?

A I met Thomas Zammas when I was working with Executivies Securities approximately 19171.

Q Did you thereafter from time to time do business with him?

A Yes. He bought and sold stocks through my company and I was the broker.

Q Do you know the defendant in this case, William Rodman?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes.

MR. BERGER: Identification is conceded.

MR. LOWE: Thank you, Mr.Berger.

Q When and where did you first meet Mr. Rodman?

A I met Mr. Rodman at his office at Pohs Levy. That would have been some time in the spring of 1972.

Q Mr. Permutter, you have a tendency to drop your voice as you get to the end of your statement. Keep it up all the time, because all the people back here have to hear what you are saying.

How did you come to meet Mr. Rodman on this occasion you have just described?

A I was looking for Tommy Zammas.

Q What did you do?

A I went to Billy Rodman and told him it was very important that I get a hold of Tom Zammas and that was the meeting.

Q Did you thereafter get a hold of Tom Zammas?

A Tom Zammas called me within approximately the next day, the next 24 hours.

Q Did there come a time when you had a conversation with Mr. Zammas regarding a stock known as Power

Conversion, Inc?

A Yes.

Q Would you tell us when and where that conversation took place?

A It was at the offices of Pohs Levy in the conference room, again about the spring of '72.

Q Who was present during the conversation?

A Tom Zammas and myself.

Q What was the conversation, what did Mr. Zammas say to you and what did you say to him?

A Tom Zammas said to me, "We have a very good situation here in Power Conversion and do you think Eric Aiken would do a writeup."

That's approximately what the conversation was.

Q What did you say?

A My answer to him was that knowing the background between Tom Zammas and Eric Aiken, that I didn't think Eric would touch it at all, but I --

THE COURT: Excuse me, will counsel approach the bench.

(At the side bar.)

THE COURT: I have this request for instructions which you drew up, Mr.Berger. I assume that it relates to the testimony that the witness is now giving.

MR. BERGER: Yes, your Honor.

THE COURT: As to certain conversations. Now, this wording or this proposed instruction is so worded that I don't think the jury would get it, so I am going to give it to them in my own words, that the testimony of the witness Perlmutter is taken subject to connection and the Court is receiving it subject to evidence which the Court will determine later as sufficient to connect these defendants with this testimony.

MR. LOWE: With regard to this conversation, your Honor, it is direct evidence as far as Mr.Zammas is concerned , of course.

THE COURT: Mr. Zammas was present, not Mr. Rodman.

MR. LOWE: That is correct.

THE COURT: I gather he was about to go into this area.

MR. LOWE: Actually there will be no mention of Mr. Rodman as far as these conversations are concerned. During Mr. Perlmutter's testimony he doesn't become the subject of conversation until Mr.Aiken takes the stand, but the evidence offered now is offered subject to connection as to Mr. Rodman, because it is part of the overall scheme.

Mr. Rodman obviously wasn't there and this is offered subject to connection. Perhaps subject to connection instruction would be appropriate at this time.

I certainly have no objection to it being given.

THE COURT: Do you want to wait until an appropriate question and make the objection, and I will instruct the jury?

MR. BERGER: Yes, your Honor. I would also like the jury instructed that the evidence is offered solely as to a particular defendant, but that at a certain time if the Court decides to or determines certain facts exist, the Court will instruct the jury to consider that evidence as to other defendants, but up until that time they are not to consider the evidence as to any defendant that was not present at the conversation.

THE COURT: All right, words to that effect.

(In open court.)

End 3A

THE COURT: You may proceed.

MR. LOWE: Thank you, your Honor.

BY MR. LOWE:

Q Mr. Perlmutter, you were in the middle of the conversation. I believe you had told us what you said to Mr. Zammas. Had you finished that part of it?

A I believe so, but I will repeat it. I said I didn't think Eric would do anything with Tommy because of some problems they had in the past.

Q What did Mr. Zammas say to that?

A I don't remember if he mentioned specific amounts of money but he said it will certainly be worth his while, or he might have mentioned the sum of money. I'm not certain if it came up at that time. And I agreed to mention it to Eric Aiken.

THE COURT: Please try to keep your voice up.

THE WITNESS: I'm sorry, your Honor.

Q Try to make sure that someone behind me can hear you, Mr. Perlmutter, and then all the people who have to hear you will be able to.

What did you do after this conversation with Mr. Zammas?

A I spoke to Eric Aiken and I told him that Tommy Zammas approached me with getting the idea of a writeup in Value Line for Power Conversion and Eric Aiken's almost immediate reaction is, "I don't want to have anything to do with it."

MR. ENTIN: Objection, your Honor. At this point, your Honor, this would call for limiting instructions.

THE COURT: Ladies and gentlemen, during the course of the testimony of this witness he will be testifying as to conversations he had directly with a particular defendant and those conversations are admissible in evidence because the defendant was present. And if a second defendant was present when the statement was made, those statements made by the first defendant, testified to by this witness, would also be admissible.

We have a problem in the criminal law, and in other cases, with respect to statements made out of the presence of a defendant, when he is not present, and those are called hearsay statements. If the witness comes into court and tells us something that was said to him when the defendant was not present or did not authorize the statement, that is.

We are going to have a number of such

statements in this particular testimony. The court is going to take that testimony subject to connection, which means that at some point, perhaps at the end of the government's case, the court has a duty to determine whether, quite aside from any hearsay statement, there is independent evidence to connect each defendant with the crimes charged in the indictment. And then I will subsequently instruct you as to whether you can consider these hearsay statements, that is, statements made out of the presence of a particular defendant in your deliberation.

So as we hear these objections, please bear that in mind, that if there is an objection to the conversation that this witness is testifying to out of the presence of a defendant, counsel will object and the court's ruling will be subject to connection. That would mean that the court will determine later whether you are to consider that statement of that particular defendant.

This witness will be testifying to conversations he had with Mr. Zammas and Mr. Aiken and not Mr. Rodman, as I understand it. So his testimony is being taken subject to connection also to Mr. Rodman, that is, subject to the court later finding that there

is independent evidence connecting Mr. Rodman to the charges, whichwould then permit you to consider these hearsay statements as against Mr. Rodman, who was not present when they were made.

Now, with that understanding, let's proceed.

MR. LOWE: Thank you, your Honor.

BY MR. LOWE:

Q As I understand it, Mr. Perlmutter, you were about to tell us what Mr. Aiken said to you in response to what you had said to him on that occasion.

MR. ENTIN: Your Honor, I am going to object to any statements of Mr. Aiken as hearsay. He is no longer a defendant in this case, and as such these statements cannot come in. It must come in directly from Mr. Aiken.

THE COURT: Overruled.

A Mr. Aiken's first reaction was, "I don't want to have anything to do with Tommy Zammas again."

Q Did he say anything else at that time?

A It was based on the problem they had had in the past at one time.

Q Did you have occasion to speak to Mr. Aiken again on the subject of writing an article about power conversion?

A Yes, I did.

Q When and where was the second conversation?

A With Mr. Aiken it was probably over lunch or dinner one day when we had sat down.

At that time -- it was probably August of '72 -- there were articles coming out, very favorable articles on the stock Power Conversion comint out in over-the-counter magazines, some brokerage houses were recommending it and Business Week did a large writeup on it.

Q What was the conversation with Mr. Aiken on the second occasion? What did you say to him, what did he say to you?

A I asked Eric if he would reconsider doing a writeup on Power Conversion, basically because it seemed like a good situation and we can earn some money from it.

Q Why don't you just continue with the conversation?

A At that point Mr. Aiken said, "Well, I'll look into it."

It seems like somebody who worked for Value Line had a file on it and he said he will look into

the stock and get back to me.

Q Did he get back to you?

A Yes.

Q When?

A Within a day or so after that, and he asked me to set up a meeting with Tommy Zammas.

Q You are fading out again, Mr. --

A He asked me to set up a meeting whit Tommy Zammas.

Q Did a meeting take place?

A Yes, it did.

Q When and where did the meeting with Mr. Zammas take place?

A It would have been late August, early September. It was an Italian restaurant --

Q Excuse me. Are we still talking about 1972?

A Yes. It was an Italian restaurant near Mr. Aiken's office on the East Side.

Q Do you remember the name of the restaurant?

A No, I don't.

Q Who was present at the meeting?

A Mr. Aiken, Mr. Zammas and myself.

Q What time of the day did the meeting take

place?

A Dinnertime.

Q Did it take place during the week or over the weekend?

A A weekday.

Q What was the conversation at the meeting between yourself, Mr. Zammas and Mr. Aiken?

A Either Mr. Zammas or Mr. Aiken initially brought up the old situation where Mr. Aiken had claimed that he didn't receive moneys that he was due from Mr. Zammas based on an old situation.

At that point Mr. Zammas said, "I can guarantee that you will get paid on this one and the old situation wasn't my fault, I never got what I was supposed to get."

The guarantee was to be put up -- a thousand shares of Power Conversion stock was to be put up as collateral with Mr. Aiken. The deal was $15,000 in cash to be payable upon the writing of the article and some type of play on the profits of the thousand shares of stock which Mr. Aiken would be in possession of.

Q What did Mr. Aiken say?

A At that point he said, "When I got the stock in my hand, then we will go ahead."

Q Did you leave the restaurant that night alone or with Mr. Zammas and Mr. Aiken?

A We might have walked out together, but then I left the two of them.

Q You didn't go anywhere else with them that night?

A No.

Q Did you receive any money from Mr. Aiken in connection with this transaction?

A Yes, I did.

Q How much money did you actually receive?

A $3500 in cash and I owed Mr. Aiken $4000, which was then forgiven. So in effect I received half of $15,000.

Q And when did you receive this money?

A Approximately a week after the writeup came up.

Q During the time period August and September, 1972, Mr. Perlmutter, did you visit the offic s of C. I. Oren & Company from time to time?

A Yes, I did.

Q What was that company at that time?

A That was also an over-the-counter brokerage house.

Q Approximately how many times during August and September of 1972 did you visit the offices of C. I. Oren?

A Four, five, six, seven, anyw here in that area.

Q And on the times you did go there, how many did you see?

A I saw Mr. Zammas, I saw Mr. Rodman, and there were other people in the office who I really don't know.

MR. BERGER: Objection, your Honor. It is irrelevant, immaterial, not probative to the issues in this case and highly prejudicial by attempting to show guilt by mere association.

MR. LOWE: On the contrary, your Honor. One of the issues in this case is whether or not the defendants were dealers in stock at the time and the proof that I am about to elicit is part of the proof that they were.

THE COURT: Overruled.

Q What did you observe Mr. Rodman doing when you were there?

A The same thing any broker-dealer would do. He was receiving calls, buying and selling stock,

checking markets. Whatever the normal broker would do on a given day.

Q Was there any particular stock being dealt in at the times you were there?

A They were certainly dealing in Power Conversion.

Q What did you observe Mr. Zammas to do while you were at the offices of C. I. Oren?

A Basically the same thing Mr. Rodman was doing.

MR. LOWE: Thank you, Mr. Perlmutter.

I have no further questions.

THE COURT: Mr. Entin, would you care to cross examine this witness?

MR. ENTIN: Yes, your Honor.

THE COURT: Mr. Berger, did you want to go first?

MR. BERGER: No, your Honor.

THE COURT: Your client is Mr. Rodman. He is listed first. Do you want to cross examine first?

MR. BERGER: Yes. I will just ask one or two questions.

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Perlmutter, my name is Mr. Berger.

You testified that when you went to the office of C. I. Oren you saw Mr. Rodman doing what any normal broker would do, is that correct?

A Yes.

Q Thereafter, Mr. Lowe asked you was he dealing in any particular stock, and your answer to that was Power Conversion?

A Yes.

Q Isn't it a fact that Mr. Rodman was dealing in many different stocks and that Power Conversion was just one of those stocks?

A It was one of many, but it was the predominant stock that I heard him talking about.

Q How many shares of Power Conversion did you you actually hear Mr. Rodman buy?

A I definitely couldn't recall the number.

Q How many shares of Power Conversion stock did you actually hear Mr. Rodman sell?

A Again, I couldn't give a definite number.

Q How many brokers did you hear Mr.Rodman call on Power Conversion stock while you were there?

A I couldn't tell you if they were brokers, but there were many calls and there were many conversations about Power Conversion. I don't know if they were

clients, brokers or whoever.

Q But there were conversations?

A Yes.

Q You wouldn't consider them dealings, would you?

A I would, yes.

Q Was every one of those conversations a buy?

A Not necessarily.

Q Was every one of those conversations an offer to sell?

A Not necessarily.

Q It was really nothing unusual in what Mr. Rodman was doing while you were up there, was there?

A Within a brokerage house, no.

MR. BERGER: Thank you. I have no further questions.

CROSS EXAMINATION

BY MR. ENTIN:

Q Mr. Perlmutter, you indicated in your testimony, and Mr. Lowe was kind enough to introduce in evidence and read a memorandum of agreement with regard to yourself and with regard to several certain practices in the securities industry relating to yourself that occurred over a period of time, is that correct?

A Yes.

Q Was it your understanding based upon this agreement that despite the number of deals in which you may have been involved you have received for those deals total immunity from prosecution?

A No.

Q You have not received total immunity from prosecution on those deals?

A My understanding of this is that I only have received immunity on occasions when I was involved with Eric Aiken in the taking of money that we shared.

Q In this particular document I notice a very interesting thing. You indicate -- paragraph 3, that Mr. Lowe read -- that you acknowledge your own involvement as a middleman in arranging for various persons to bribe Eric Aiken in return for Eric Aiken's

publication in an advisory service of a favorable article about publicly traded securities, and then three securities are named, and then, (d), a group of five securities which are to be selected by Sidney Stein the names of which are unknown to Perlmutter. You signed that?

A Yes.

Q And you read that?

A Yes.

Q Were you trying to say in this agreement that you made a deal to agree that you were involved in the sale or the bribing of Eric Aiken with five securities you didn't even know the name of?

A Yes. I don't know the specific names. Sidney Stein was to present Eric with a group of securities. Eric was to take Mr. -- Mr. Aiken was to take the five securities that he thought were the best securities and eventually do a writeup on them.

Q And Sidney Stein would then pay Eric Aiken, is that correct?

A Sidney Stein did give me a sum of money. The balance would have been paid to me by Eric Aiken or somebody else.

Q Didn't you ever ask him what companies they

were for?

A I have heard a lot of names bandied about between Sidney Stein and Eric Aiken. I could not tell you which writeups were specifically on those stocks, no.

Q You really don't even know what you are agreeing that you received money on? Is that what you are telling this jury?

How many deals were you and Eric Aiken involved in over the period of your association?

A Approximately four or five.

Q Four or five, in which you were specifically involved, is that correct?

A I would say so.

Q How many in which you were inferentially involved, where Eric would pay you money and say, "I received some, here is your share"?

A None.

Q Were you Eric Aiken's middleman?

A On occasion, yes.

Q You negotiated deals for him?

A On occasion, yes.

Q Did you ever act as his bagman, pick up the money?

A Yes.

Q Who else did Aiken deal with other than Sidney Stein, that you know of?

A As far as receiving money?

Q Yes, sir.

A There were one or two securities that he did a writeup on for a financial public relations firm.

Q Which firm, if you recall?

A Marcon, I believe, M-a-r-c-o-n.

Q Do you remember the name of the security involved there?

A No, I don't.

Q Do you remember any of the names which were bandied about as securities which Eric had done articles on that you received commission on?

A I believe Associated Foods was one of them, which is why it was listed, and there were a group of others whose names I don't recall.

Q Other than this problem with Eric Aiken, did you have any other problems while you were dealing as a securities dealer where you might have committed a crime which you have not elucidated to the jury?

MR. LOWE: I object, your Honor, because

they are not the subject of any agreement or a conviction and they may not be inquired into at this time.

MR. ENTIN: This man is a government witness and he presented an agreement which states that the basis of this agreement is that this man has told the truth about all his crimes and all his crimes are theoretically listed there. And if he committed crimes he didn't tell about, he could be prosecuted.

MR. LOWE: It doesn't state in the agreement he has told everything about whatever crimes he committed. It states if he committed any crimes other than those he did with Mr. Aiken in connection with arranging the bribes, he will be prosecuted if the evidence justifies it. The document is in evidence and speaks for itself and I don't think Mr. Perlmutter should be questioned about things which in effect call for a legal conclusion as to whether his activities in the securities industry were of the nature of a criminal act when he has not been indicted, prosecuted or convicted. And indeed no one even knows if he committed any.

MR. ENTIN: Mr. Lowe presented this man as a witness --

THE COURT: Just a moment. The issue

is whether, as you claim, the agreement includes immunity from prosecution for this witness for other crimes probably not listed in there.

Now, the government's instruction on the agreement is that only those which he has set forth in the agreement are the subject of the agreement. That is, he would not be prosecuted on something he has not disclosed. Is that right?

MR. LOWE: That is correct.

I would point your Honor to the Rule 404 of the new Federal Rules of Evidence, particularly paragraph (b) of that rule.

(Pause.)

MR. ENTIN: Your Honor, this would be covered by 404(a)(3), which is the character of a witness, which refers to 607, 608 and 609.

THE COURT: Will counsel approach the bench.

(At the side bar.)

THE COURT: It seems to me that the applicable rule is Rule 608, relating to the character and conduct of a witness.

MR. LOWE: I agree, your Honor, and specifically 608(b), and I contend in connection therewith calls for cross examination into specific

instances of conduct. Mr. Engin's question is not into specific instances of conduct.

MR. ENTIN: I will withdraw that question and go into specific instances. I will go into his other conduct.

MR. LOWE: If you ask a specific question about "Did you do X, Y or Z," I don't object to that.

MR. ENTIN: That will be fine with me, your Honor. I will withdraw the general question and ask specific questions.

THE COURT: This rule, 608(b), also has this paragraph, which is the last paragraph:

"The giving of testimony whether by an accused or by any other witness does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibioity."

MR .ENTIN: Then I would ask the court to instruct him prior to my asking any further questions along this line as to his constitutional rights.

MR. LOWE: I request the court to do that out of the presence of the jury.

MR. ENTIN: I would request the court to do that in the presence of the jury.

MR. LOWE: He has given indication of an intention to raise the Fifth, and if you want to do that --

THE COURT: We will take our recess at this time.

(In open court.)

THE COURT: Ladies and gentlemen, at this time we are going to take our morning recess and that will be for 15 minutes. The jury is excused for 15 minutes.

(The jury left the courtroom.)

MR. LOWE: Your Honor, Mr. Perlmutter's attorneys are in the courtroom and perhaps they would care to be party to this matter, since it does affect Mr. Perlmutter, and his attorneys might wish to advise him about it.

MR. ENTIN: I object to him having conversation with his attorney at this time. This is not the grand jury and the man is under oath and I don't think he is entitled to any communication outside of direct examination and cross examination.

THE COURT: I believe that at the side bar, out of the presence of the jury, you indicated, Mr. Entin, that you had specific instances which you wanted to direct the witness' attention to aside from

matters referred to in the agreement.

MR. ENTIN: Yes, your Honor, I do.

THE COURT: With respect to the rule which you indicated as applicable, that is, Rule 608 and, specifically, 608(b), the inquiry must be limited to matters which are probative of the witness' truthfulness or untruthfulness. In that connection, I think we have to know, Mr. Entin, at this point specifically what those matters are. The rule provides that ordinarily specific instances of the conduct of a witness for the purpose of attacking his credibility other than conviction of a crime, as provided in Rule 609, may be done by extrinsic evidence.

The rule says they may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness:

1. Concerning his character for truthfulness or untruthfulness; or,

2. Concerning the character and truthfulness or untruthfulness of another witness as to which character of the witness being cross examined has testified.

Initially, the court has to determine whether those other instances go to the witness' ability totell the truth.

Tk 4B

MR. ENTIN: Yes, your Honor. I have no objection to making this proffer. I would prefer to do so outside the presence of the witness, for purposes of my cross-examination.

THE COURT: All right, you may step into the witness room.

(Witness leaves the courtroom.)

MR. ENTIN: Initially, your Honor, we wish to deal with questions of massive income tax evasion. We want to deal with a series of securities areas where we don't believe we have been given the names of the stocks or the fact that he participated in them.

Lastly, we wantto go into the tampering of customers' accounts, of an account executive at Continental Securities, where Mr. Perlmutter, we believe, converted over $100,000 in client moneys to his own use and was the basis of his acting as middle man for Eric Aiken, to raise money for the purpose of trying to put some of the money back into the customer acoounts, as related to Mr. Perlmutter by other witnesses we will produce at a later time.

THE COURT: Do you want to say something, Mr. Lowe?

MR. LOWE: Yes, your Honor. I am not sure I understand what Mr. Entin meant by his second proffer.

I don't object to inquiry by the defense into whether or not Mr. Perlmutter lied to the Internal Revenue Service in some fashion in connection with his income tax returns, nor do I object to them inquiring into whether or not Mr. Perlmutter fraudulently dealt with accounts entrusted to him by customers. I think they are both appropriate. I do think the rule provides in response to Mr. Entin's statement about calling witnesses that extrinsic evidence of this behavior is not admissible.

THE COURT: Yes, that is ruled out.

MR. LOWE: I object to an inquiry into an area where Mr. Perlmutter is put between a rock and a hard place, to think up what he might have in mind by suggesting in some stock deal he did something wrong, without naming the stock or the wrong activity.

MR. ENTIN: I will name the stock, I will discuss the deal with Mr. Perlmutter, and it will be very specific and very clear.

THE COURT: Give us one example.

MR. ENTIN: Yes, your Honor. The article in the June 25, 1971 issue of Value Line Selection, Autotrain Corporation. That is one.

Number 2, that I intend to go into --

MR. LOWE: Could you tell us what you intend

to go into more specifically?

MR. ENTIN: In mid-1971 Mr. Perlmutter was working on the placement of approximately two million dollars in terms of an issue for Autotrain while with Executive Securities, and then, mysteriously, while Mr. Perlmutter was working on that placement, lo and behold, an article appeared in Value Line. It is not mentioned in there and there is a connection between Mr. Perlmutter and Value Line.

MR. LOWE: Why don't you ask him whether or not he participated in a bribing situation on that --

MR. ENTIN: That is what we are going to go into --

MR. LOWE: That is simple. Ask the question.

MR. ENTIN: I was asked for a proffer. That is a specific instance, but I have many of them.

THE COURT: You want to ask about that specific instance?

MR. ENTIN: That one and several others.

THE COURT: That he received a bribe in connection with that?

MR. ENTIN; I will ask first whether or not he had a $2 million issue and what was his interest in Autotrain and then whether or not he paid a bribe for the

article and let him identify the article and either admit or deny it, but I think there is definitely a question there I can present to the jury.

THE COURT: That is not one of the matters listed in the agreement?

MR. ENTIN: No, your Honor.

MR. LOWE: Unless it is one of the five involved, and I don't believe it is, because I believe I know what all the articles are -- I don't believe Autotrain, to our knowledge, was the subject of a bribe and I suppose that if it turned out that it were, it would be the subject, I suppose, of a perjury prosecution, if Mr. Perlmutter were to deny it.

MR. ENTIN: Your Honor, I have many more than five where I believe Mr. Perlmutter was specifically involved and which I will deal with specifically before this court.

THE COURT: In that case, we have the second matter I mentioned at the side bar, and that is that a witness who is in this position, as I understand the rule, doesn't waive his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Now, you are offering this with respect to this

witness' credibility, are you not?

MR. ENTIN: Yes, your Honor.

THE COURT: So that he would have to be instructed by the Court with respect to his Fifth Amendment rights, and your claim is that this should be done in the presence of the jury and the Government's contention is that it should be done out of the presence of the jury and I think the Government is right about that, although I will hear you if you have some authority to the contrary.

MR. ENTIN: Your Honor, at this time I didn't anticipate this particular problem, and I don't have any authority on it at this point.

MR. LOWE: Your Honor, I have reconsidered the Government's position and I guess the Government doesn't really object, if your Honor wishes to instruct Mr. Perlmutter in his constitutional rights before the jury, if that is the defendant's desire and the Government withdraws any objection previously expressed to that practice.

MR. ENTIN: Thank you, Mr. Lowe. It is the defendant's desire.

THE COURT: Let me say this, Mr. Entin: You said you had a number of such instances?

MR. ENTIN: Yes, your Honor.

THE COURT: How many do you have?

MR. ENTIN: Seven, your Honor, at this time, and there may be others I wish to inquire into where I have suspicion --

THE COURT: You say 7?

MR. ENTIN: Yes, your Honor, and there may be as many as 15 or 20 when I finish going through my notes.

THE COURT: The Court will put a limit on the number of such other instances you can go into with respect to the witness' credibility. The witness has already testified as to his involvement in the instant crime, and his involvement in other crimes set forth in the Government's agreement with him.

You can use all that in arguing to the jury that he should not be believed or that his credibility is certainly open to question in this instance. So that what I am doing now is placing a limit on how far you can go into this matter of attacking his credibility.

If you have seven other instances, that seems to me sufficient and we ought not to go on with this kind of thing indefinitely.

MR. ENTIN: Your Honor, I would then only request approximately an additional five minutes to meet with my client and co-counsel to determine the seven specific

instances we wish to pursue in depth.

THE COURT: All right, you do that, because I don't want to have this matter go on and have to continually rule whether these are specific instances or whether we are just on a fishing expedition. If you have something specific, list it now so that we can get on with the cross-examination after a brief recess. You get with your client and decide what specific instances you want to bring in.

MR. ENTIN: Yes, your Honor. We will have that ready in five minutes.

MR. BERGER: Your Honor, am I correct in assuming that Mr. Lowe is not to discuss what just occurred with the witness?

MR. LOWE: I have no intention of speaking to Mr. Perlmutter while he is on cross-examination.

THE COURT: Is his lawyer here?

MR. GARBUS: MartinGarbus, attorney for Mr. Perlmutter. I would like to render whatever advice is required after your Honor gives the cautionary ruling to him and I would like to discuss it with him. I will try to be very careful not to discuss the material that I have heard here.

THE COURT: My suggestion is that you discuss

it with him now during this recess.

MR. GARBUS: I shall do that, your Honor.

THE COURT: Speak to him about his Fifth Amendment and I will do so again when he resumes the stand.

MR. ENTIN: Your Honor, I would state my objection to any conversation with the witness subsequent to the commencement of the cross-examination.

THE COURT: Well, the attorney is requested by the Court to discuss with his client or advise his client, rather, of his Fifth Amendment rights. He has, as I see it, a duty to do that.

MR.GARBUS: Thank you, your Honor.

THE COURT: We will recess now.

(Recess.)

End 4B

S T A N L E Y P E R L M U T T E R resumed.

(Jury absent.)

THE COURT: Mr. Entin, do you have the specific instances lined up now?

MR. ENTIN: Yes, your Honor.

THE COURT: What are they?

MR. ENTIN: There are approximately five or six, Autotrain, Building & Land, Basic Leasing, Newport Chemical, Magic Marker.

THE COURT: YOu are going to ask the witness whether he accepted bribes --

MR. ENTIN: Yes, or shared a beneficial interest with Eric Aiken. The witness was a stock broker, your Honor, and in many instances his company was managing these companies' accounts. And, whether or not there was a share of money between himself and Mr. Aiken in order to stimulate the trading in the various stock or various security in which he wouldmake the commissions and split them.

Along those lines, your Honor.

THE COURT: Will you bring in the witness and his lawyer, please. Mr. Garbus, have you had an opportunity to advise your client of his constitutional rights?

MR. GARBUS: Yes, I have, your Honor.

THE COURT: Now we are ready to proceed. Bring in the jury.

(Jury present.)

THE COURT: You may proceed, Mr. Entin.

MR. ENTIN: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. ENTIN:

Q Mr. Perlmutter, in 1972 were you an affiliate with a company by the name of Continental Securities, Inc.?

A Yes, I was.

Q What was the nature of that kind of company and the nature of your participation with it?

A It was an over-thecounter brokerage house that traded over-the-counter stocks and participated in undewritings.

Q Who was your principal employer there?

A David Greenberg.

Q You have testified, Mr. Perlmutter, that you were a registered representative. Would you tell this jury what a registered representative is?

A A registered representative is someone who buys and sells stocks and participates in underwritings or whatever other functions his company assigns to him.

Q As a registered representative, you have handled customer accounts, did you not?

A Yes, I did.

Q And in the nature of handling customer accounts, were large sums of money placed in your safekeeping for the purpose of the purchase and sale of securities?

A Yes.

: And during the years 1971 and 1972, particularly during the periods of time when you were involved with Continental Securities, did you convert to your own use sums in excess of $100,000 from your customer accounts?

THE COURT: With respect to the answer to that question, Mr. Perlmutter, the Court would like to instruct you that having taken the witness stand, to testify with respect to your involvement with this case is one thng, but with respect to these other matters now, about which the lawyer is cross-examining you, you have not, by taking the witness stand, waived your Fifth Amendment privilege against self-incrimination with respect to those matters.

Do you understand?

THE WITNESS: Yes, your Honor.

THE COURT: Therefore, with respect to any question now put to you by Mr. Entin regarding other matters, other than this particular case,y ou may invoke

your Fifth Amendment privilege if you feel that the answer to the question might tend to incriminate you.

Do you understand?

THE WITNESS: Yes, your Honor.

A Upon advice of my attorney, I will invoke the Fifth Amendment privilege.

Q I didn't hear that?

A Upon advice of my attorney, I will invoke the Fifth Amendment privilege.

Q While you were with Executive Securities, and I believe that was prior to the time you were with Continental, Mr. Perlmutter --

. That's right.

Q -- did you also tamper with customer accounts there?

A Upon advice --

MR. BERGER: Objection, your Honor. I think we need some clarification of the verb "tamper."

Q While you were with Executive Securities did you go into the funds that were given to you for safekeeping by your customers and clients and take these funds and use them for yourself?

A Upon advice of my attorney, I will invoke the Fifth Amendment.

THE COURT: I will now instruct the jury that the man who is standing is the witness' attorney, Mr.Garbus, so the jurors will understand.

MR. GARBUS: Your Honor, may I approach the bench?

(At the side bar.)

MR. GARBUS: I am in a somewhat difficult position having rendered advice based on questions I hadn't heard and also in a position where I could not because of the Court's admonition discuss fully the material that was discussed. It would probably be that if I can have this discussion without disrupting the Court, many of these questions could be answered because I could see the tendency that is going to develop, in the form of these questions, and there is a great deal of material my client could easily answer. I think in all fairness to Mr. Perlmutter, I think he can easily and with full honesty deny all of these things and I hate to put him into the position of taking the Fifth Amendment.

If they were to ask him for example did you rape somebody yesterday, based on the advice I gave him, he would take the Fifth Amendment privilege, because I could not anticipate the question. I guess what I am asking for is perhaps discussion with him with respect to each of these

questions.

MR. BERGER: Your Honor, I was going to discuss in another case in which I participated a witness was faced with a similar situation and the way it was handled was, his lawyer stood alongside him and as each question was asked,he would look at his lawyer or briefly consult and either answer the question or refuse to answer it, as he chose, but he would in effect consult with his lawyer as to each question rather than given a blanket Fifth, because why take any risks.

MR. GARBUS: The other problem that arises and again this will have to do as it goes on, is the extent t which -- did you steal a million dollars, opens the door, did you steal $10,000 from John Smith. I guess your Honor will be conscious of the fact in allowing him to say no, I didn't steal a million dollars, I am not allowing the waiving of the Fifth Amendment with respect to did you steal $10,000 from John Smith.

It becomes a case by case problem.

THE COURT: I think it would be helpful perhaps for you to stand next to the witness rather than get up each time and as the question is put to him, you can indicate to him whether he should answer or not, but I thought what you suggested was, that you were not familiar with any

of those matters and therefore could not tell him --

MR. GARBUS: I am familiar with some of them. Some of it is totally new to me. So, if your Honor would permit off the record colloquy so we won't have to go back into the room, I can discuss it with him for three minutes.

MR. ENTIN: Your Honor, I am unalterably opposed to this. There are three things you do in this life by yourself. One is born, the second die, and the third is testify.

MR. GARBUS: I hoped I would never hear this again.

MR. BERGER: Your Honor --

THE COURT: Just a moment. There are three lawyers talking at once.

MR.ENTIN: The man either knows he has a problem and he should take the Fifth, he has been advised by the Court and by counsel, and he doesn't need a lawyer on each and every question. If he asked you was it $100,000--

THE COURT: What we are going to do is to allow ten minutes for Mr.Garbus to discuss these matters with his client. Since you now know the names of various stocks involved -- were you in the courtroom?

MR. GARBUS: Yes. I can then discuss some

of these things.

MR. ENTIN: Your Honor, it eliminates the element of surprise in my cross-examination. The man is not entitled to know any more in advance what I am going to ask him than I was entitled to know what Mr. Lowe's questions were.

THE COURT: I am saying that his lawyer will now discuss with the witness those stocks which you mentioned. Not that you should do so.

MR. ENTIN: But I rpoffered those to the Court in response to the Court's question to give the Court specifics. He is not entitled to know in advance to my asking him about any of these things. It eliminates the particularity of surprise and will give him a chance to think of a good answer back in the witness room. There is a difference giving a man time for reflection to an answer when I am trying a case in front of a jury --

THE COURT: What the lawyer is going to do is go over the stocks with him and decide whether it is necessary for him to invoke the Fifth Amendment. Is that what you have in mind?

MR. GARBUS: Yes. In other words, he had three particular areas, income tax evasion, and some specific stocks and the other manipulation of customer accounts.

End 5A

MR. ENTIN: And did he have a beneficial interest in certain transactions, Autotrain, among others.

MR. GARBUS: I think the only stock I know of that you mentioned is Autotrain. I can go through those with him.

MR. ENTIN: I mentioned others.

MR. BERGER: I have the list.

MR. ENTIN: For the purpose of the record I object to it and I think it greatly prejudices my effective right of cross examination by showing the witness in advance the areas I intend to ask questions and eliminating any possibility of surprise and anything that might affect a jury determination and it prejudices the situation and I object strenuously for the record.

MR. BERGER: Your Honor, I join in this objection.

(In open court.)

THE COURT: At this time we will take another recess. The jury is excused.

MR. ENTIN: The hour is after noon, your Honor. Would it be permissible now to take a luncheon recess?

THE COURT: We will go to lunch at 12:45.

The jury is excused for 10 minutes.

(The jury left the courtroom.)

MR. ENTIN: Just for the record, your Honor, we would indicate the case law in the United States is legion on the testimony of the credibility of a witness. There are many times in the appellate court and many circuits which said in reviewing testimony the jury is in the best position to determine because the jury is the only one who had occasion to observe the demeanor and action while testifying.

THE COURT: This relates to other matters, other than the issues on trial here. You are asking this man here about his involvement and we are now concerned with his Fifth Amendment right. The lawyer did not know at the time he instructed the witness about his Fifth Amendment rights specifically the stock or matters you are going into. He has suggested to me that perhaps, now that he knows, it is unnecessary for the witness to follow his advice to just blanketly invoke the Fifth Amendment; some of these questions he may be able to answer without invoking the Fifth Amendment. That is the purpose of this recess.

You give him the names of everything so we don't have to stop again. Do you have the names?

hpa3

MR. GARBUS: Autotrain, Building & Land, Basic Leasing, Newport Chemical, Magic Marker.

MR. ENTIN: I have some additional here.

THE COURT: Let's get it all out.

MR. ENTIN: Mill Brothers, Basic Leasing, Colonial Foods, E & B Supermarket, National Module, Newport Chemical.

MR. GARBUS: I gather, just so that I am clear on this, that we have four distinct areas and that if the witness were to answer, for example, "I never converted funds in excess of $100,000, that doesn't open the door to this variety of other stocks and other transactions. I am concerned about the opening of the door problem also. In other words, if they were to ask him, "Did you steal a million dollars?" and he said no, does that then open the door to some other transaction involving some of these stocks?

THE COURT: I don't know that I follow that.

MR. BERGER: I believe Mr. Garbus is suggesting that he doesn't want to run into the problem of there having to be a ruling by the court at some point that Mr. Perlmutter has waived his Fifth Amendment rights with respect to an area of questions.

MR. GARBUS: I suggested that before. It becomes very difficult for me.

THE COURT: That's why we have asked Mr. Entin to list the stock transactions or other instances specifically so that we don't get any broad, overall question like, "Did you steal a million dollars?" and he says no. He can go into this area if he has specific instances and that's what we have been on for the last few minutes now. These must be specific instances.

He has now given you, as I understand it, the areas he is going into. One is tax evasion, the other is customer accounts, taking money from customer accounts --

MR. ENTIN: Yes, your Honor, and also related to that, touting customers on stocks that he had a specific or beneficial interest in, and among them are the ones indicated to the court. He has a list on those.

MR. GARBUS: In other words, those seven or eight stocks.

MR. ENTIN: There were a myriad of deals and we will continually refer back to the seven or eight stocks in our cross examination of Mr. Perlmutter.

THE COURT: Just a minute now.

MR. GARBUS: That's the problem I am concerned about.

MR. ENTIN: Your Honor, there is more than one way a person can steal and we have reason to believe, of certain areas in which Mr. Perlmutter engaged, that we feel there was criminal conduct. I have listed the specific stocks where I believe I can show Mr. Perlmutter was certainly interested. I have indicated what the situation was, for example, your Honor, with Autotrain. For me to indicate any more --

THE COURT: What criminal conduct are you indicating?

MR. ENTIN: Violation of the Securities Act, violations of -- well, with regard to that, conversion of customer accounts and --

THE COURT: Are you going to ask him whether, as a matter of fact, he took money from a particular customer's account, say, in such-and-such a year?

That's what I mean by specific instances of misconduct.

MR. GARBUS: Your question is exactly what caused me to rise: Did you convert funds in excess of $100,000? That's the least specific question

I have heard and that's the question I know Mr. Perlmutter can easily answer. Your Honor's reason to be specific was being transgressed, which is what my concern was.

THE COURT: That is the problem in this area. You are not permitted to just generally --

MR. ENTIN: Your Honor, with regard to the question that I asked, I have specific information that this is a statement that Mr. Perlmutter made to another individual that he had converted these funds and this is why he is working for Eric Aiken. I am not entitled to discovery in federal court. There is no way for me to make a determination as to which specific customer account he raided. I can only go by previous declarations that he did certain acts.

MR. GARBUS: I seem to find myself in a position of an adversary. He has no specific information with respect to that particular question, and your Honor's ruling was he be specific. And what he says is somewhere down the line somebody is going to say this is what he said, and that's the cross examination and that's what prompted my question. That is an improper question, and to go through the charade of the Fifth Amendment back and forth is wrong when the question is that bad.

MR. ENTIN: Your Honor, this is based upon a statement that he made, it is based upon a reasonable belief --

THE COURT: I am saying when you put a question to him, ask him a specific question: "Did you take $10,000 from the account of Mr. X, one of your customers, in 1972?" That's what I mean by a specific instance of misconduct. You can ask him about that. That's all I'm trying to say.

MR. ENTIN: May I ask him, "Did you tell Joe Smith that the reason you were working for Eric Aiken was the fact that you had taken over $100,000 out of customer accounts"?

THE COURT: You can ask him that.

Now, do you want a recess?

MR. GARBUS: Yes, five minutes.

THE COURT: All right, step out, please.

(Recess.)

t6a

MR. ENTIN: Will your Honor make inquiry into what I consider is taking an unusual amount of time to advise a personas to rights as to four or five matters. I wanted to prevent getting into an extensive discussion about how possibly to evade testimony on the stand. It is supposed to be a simple thing to take the man out there and say, "Here are the particular matters. Did you have anything to do with them?"

THE COURT: By my estimation, it has been 12 minutes, and you say that is an inordinate amount of time?

MR. ENTIN: Yes, ma'am. I gave no more than six or seven stocks on which I intended to ask questions.

MR. LOWE: Your Honor, I think Mr. Entin's basic argument is an unfortunate attack on the integrity of a fellow member of the bar and for that reason I feel called upon to protest that his argument is not well founded.

Mr. Garbus is a well-recognized, well-regarded member of the bar of the Southern District of New York and I doubt very much that Mr. Garbus is sitting with his client planning on how to evade answering questions.

I resent that a fellow member of the bar of

which I am a proud member is attacked by another member of the district.

MR. ENTIN: I am not suggesting that. I suggest there is a lot of time given here to think about something which is denying my right of effective cross examination.

THE COURT: This went only to the Fifth Amendment rights of this defendant and it was my intention to inquire at 12:30, in 15 minutes, as to whether he is ready to proceed, which we will now do, since it is 12:30.

MR. BERGER: Your Honor, I wonder whether it would be all right with the court if defense counsel brought the instructions to the jury in on Friday as we have a typing problem. My office is up in Westchester and we will be working this evening putting together our instructions and I couldn't possibly get it to my secretary until tomorrow.

THE COURT: All right. You may have until Friday at 2 o'clock. Incidentally, we are going to recess Friday at 2 o'clock.

Mr. Clerk, bring in the witness.

(Pause.)

S T A N L E Y P E R L M U T T E R resumed.

THE COURT: Have you had a chance to speak to your client, Mr. Garbus?

MR. GARBUS: Yes, your Honor.

THE COURT: All right, bring in the jury.

(Jury present.)

THE COURT: You may proceed, Mr. Entin.

MR. ENTIN: Thank you, your Honor.

CROSS EXAMINATION CONTINUED

BY MR. ENTIN:

Q In 1971 what securities house were you affiliated with?

A Executive securities.

Q While you were at Executive Securities did you have an opportunity to handle an issue or a stock situation known as Autotrain?

A Upon advice of my attorney, I have decided to invoke the Fifth Amendment on this last question.

Q On the grounds it might tend to incriminate you?

A I don't know what the legal terminology is.

Q With regard to Autotrain in particular, is it a fact that your company and you personally were

handling a $2 million position in that stock?

MR. LOWE: Your Honor, I object. I think it is improper to continue asking questions of the witness on the subject as to which counsel now knows the witness will take the Fifth.

THE COURT: Yes.

Read the answer, Mr. Reporter.

(Answer read.)

THE COURT: I thought he had said on this line of questions.

THE WITNESS: That is what I said, your Honor.

THE COURT: That is why I am suggesting to you to keep your voice up. I thought that is what you said, but he read it back and he doesn't have it and you say that is what you said.

MR. ENTIN: May I ask a clarifying question, your Honor?

THE COURT: Yes.

Q If I were to ask you any additional questions with regard to any of your dealings with Autotrain, you would take the Fifth Amendment, is that correct?

A Yes, I would.

Q When did you leave Executive Securities, Mr.

Perlmutter?

A I am not sure of the exact date. It would have been several months after the Autotrain issue.

Q While you were at Executive Securities, about the same time as the Autotrain issue, did a stock come to your attention by the name of Ricoh, R-i-c-o-h, Time?

A Again, upon advice of my attorney --

MR. ENTIN: Your Honor, that is one of the stocks covered in the agreement.

THE WITNESS: May I see that, please.

THE COURT: You would like to see Government's Exhibit 5? Is that what you are asking for?

THE WITNESS: Thank you.

A Your timing is incorrect. I was at Goodbody & Company when I first heard of Ricoh Time Corporation.

Q When was that?

A 1970, maybe early 1971.

Q At that time did you know Eric Aiken?

A I am not certain. I met him about that time, possibly before that.

Q With Ricoh Time, did you take that particular issue with you in terms of your interest in it when you went from Goodbody to Executive Securities?

A Yes.

Q What was the nature of your position with regard to Ricoh Time?

A Initially, many of my clients invested money in the private placement of Ricoh Time Corporation.

Q You received commissions therefrom?

A Absolutely not.

Q How did you profit from Ricoh Time?

A At that point?

Q Yes.

A Nothing at all.

Q Did you thereafter come by a method or means where you would actually profit from Ricoh Time?

A Yes.

Q What was the nature of that profit?

A I was to, in effect, syndicate or help syndicate the issue of Ricoh Time and for that earn a commission from a big board brokerage house as a finder for the underwriting.

Q Would an article in Value Line have been helpful to you?

A I would say yes.

Q Did you proceed to arrange for the publication of an article in Value Line?

A I did, but not exactly the way your question implies.

Q Explain how you proceeded to handle this.

A Basically, Eric Aiken and I were friends at the time. He saw the stock, he liked the stock. We were at that point sode some inside stock in the company which couldn't be used for two years, as in any other underwriting.

Q And he did an article on Ricoh Time for the Value Line Investment Service, is that correct?

A Yes, he did.

Q And you were able through this particular activity to net the profit that you spoke of a moment ago?

A No, definitely not. We never got one penny because the company is bankrupt and we were not able to sell any of our shares until two years after the underwriting.

Q What about the commissions that you referred to?

A Commissions I got on a normal commission basis.

Q They were helped by the article and you did profit, did you not?

A As a normal broker would, yes.

Q How did Eric Aiken profit on this particular device?

A I don't know if he did in any other way.

Q One thing that interests me a great deal, in this agreement that was read to the jury and was signed by you, you and the Government have agreed you were a very minor figure in these deals. Was there anybody else involved in this Ricoh Time deal but you and Eric Aiken?

A There were many people before I even got involved, yes, sir.

Q Are you the one who made the contact with Aiken?

A It might have been me or Winkler, I don't know.

Q He was your principal at Executive Securities?

A Yes, and he was the one who brought the deal to me when I was at Goodbody.

Q Then you came back over with it?

A I eventually went to Executive Securities when Goodbody & Company went out of business.

Q You were not really a minor figure in the Ricoh Time deal? It may be different from the others, but you were not a minor figure?

A That is not my decision to make.

Q That was up to Mr. Lowe, then, to call you a minor figure in that particular deal?

A That was his decision to make.

Q Do you consider yourself a minor figure in that deal?

A I don't know.

Q And the agreement between you and Mr. Lowe is that you will not be prosecuted for what you did with Ricoh Time, is that correct?

A So far as any arrangement for remunderation would be involved, yes.

Q You and Mr. Winkler stayed at Executive Securities past 1971?

A Mr. Winkler was eventually suspended from the Executive Securities.

Q For what sort of activity?

A I don't know. It was a SEC suspension.

Q Where did you go?

A To Continential Securities.

Q During this period of time, as you went from Executive to Continental, was the securities market your only business?

A No.

Q What other businesses were you involved in?

A I wrote a handicapping -- I was actually the selector for a handicapping sheet.

Q That was called Lawton's?

A No, it was called Clocker --

MR. LOWE: I object to this, your Honor.

MR. ENTIN: I will tie in the relevance with the next question, your Honor.

THE COURT: All right.

Q Isn't it a fact that Eric Aiken wrote that for you?

MR. LOWE: I object to the relevance of whether or not Mr. Perlmutter or Mr. Aiken had anything to do with writing a touting sheet for the race track. It has nothing to do with this case.

MR.ENTIN: May I approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. ENTIN: Your Honor, Mr. Lowe submitted the memorandum to your Honor with regard to the testimony of the co-conspirators. He based it upon the agency theory. STanley Perlmutter was the agent of Thomas Zammas and by the means of this cross-examination I am trying to bring out that he was at all times the partner of Eric Aiken and the agent of Eric Aiken, and at no time an agent or partner of Zammas.

MR. LOWE: I think he was both, but I don't think the fact that they were involved in other unrelated

business deals has anything to do with this case.

MR. BERGER: It is probative value on the issue of agency.

MR. LOWE: You can be the agent of more than one person at a time. The Government's position in this case is that all four of these people were the agent of each other at all times they were carrying out the plan of this case,which was to publish that article.

MR. ENTIN: That is not set forth in any indictment or a bill of particulars. The first we ever heard of agency with Stanley Perlmutter he was not even named as an unindicted co-conspirator and I am entitled to go into the question of agency by which Mr. Lowe is going to be trying to bring in hearsay throughout the entire trial.

THE COURT: You want to show this witness was a partner of Aiken?

MR. ENTIN: Yes, Ma'm.

THE COURT: I will let you ask it.

(In open court.)

MR. ENTIN: Would you please read back the last question.

(Question read.)

A Absolutely not.

Q Did he ever ghost write articles for you in there?

A There were no articles. The only thing that appeared were selections of horses that were running at the race track.

Q Did he ever make selections for you?

A I think there were two days when I was out of town that I had him to maybe pick some horses for me. That would be two days out of about 70.

Q And he did that for you?

A I think he did.

Q Do you think he did or know he did?

a I am not certain. I might have asked him or not, or I might have left him with sheets and said the two races I didn't do, if he could get the program, to do it for me.

Q YOu have just testified a few moments ago with regard to the Power Conversion situation that you met with Mr.Zammas in the spring of 1972, and discussed stock Power Conversion with him at that time and Pohs Levy.

A Yes.

Q By the spring, approximately what month do you mean?

A May, April, maybe early June, somewhere in

that area.

Q Do you remember giving certain testimony before the grand jury on July 13 of 1973, I would assume here in New York, and Mr. Lowe was the prosecutor? Do you recall that?

A Yes.

Q Page 2, three-quarters of the way down. Do you recall Mr. Lowe askingyou the following question:

"Q Did there come a time when Mr.Zammas approached you with a proposition called Power Conversion, Inc.?

"A Yes."

Do you recall that question and that answer?

A I am sure it was asked.

"Q Approximately when was that?

"A Approximately a little less than a year ago, roughly four to six weeks before a writeup on it, I don't remember the exact date."

Do you recall that question and that answer?

A Yes, I do.

Q Do you recall the following question from Mr. Lowe:

"Q Would it be some time within the period of August or September, 1972?

"A That would be approximate."

Do you recall that question and that answer?

A Yes.

Q Do you recall the following question:

"Q Where did you meet Mr.Zammas for the first time on the Power Conversion situation?

"A I am not sure. It could have been he and Billy, C.I. Oren, or it might have been Pohs Levy. I know I met him at one of the offices."

Do you recall that answer?

A Yes.

THE COURT: We will recess now until two o'clock for lunch. The jury is excused until two o'clock.

Please remain seated until the jurors have left.

(Jury leaves the courtroom.)

MR. LOWE: Your Honor, one of the transcripts, or portions of a transcript I gave your answer last night, related to this witness and the Government's position is that portion of the transcript which the Government turned over to your Honor last night is not properly 3500 material to be turned over to the defendants.

Some time before this witness leaves the stand I assume your Honor will rule on the Government's application.

rmb-7a Perlmutter-cross

THE COURT: Yes.

I have not had time to look at it. I will do that during the lunch hour and rule on it after that.

Two o'clock.

(Luncheon recess.)

Enb 6B

Tk 1A

hpb-1 AFTERNOON SESSION 124
2:10 P.M.

THE COURT: I have had a chance to look at Government Exhibit 3510B for identification. The Court's rulingis that it is not properly 3500 material. The court clerk is directed to seal this document.

Let's bring in the witness.

(In open court; jury present.)

S T A N L E Y P E R L M U T T E R resumed.

MR. ENTIN: Your Honor, may I approach the side bar?

(At the side bar.)

MR. ENTIN: Juror No. 9, Judge, I think, is reading today's New York Times and it is turned to the business section. On page 41 there is ana rticle about this case.

THE COURT: He has it with him?

MR. ENTIN: He has it in his hand. He is reading the business section.

MR. BERGER: I know there was an article in the Times.

MR. ENTIN: Page 41.

MR. BERGER: I don't know exactly what is in it.

MR. ENTIN: It says Aiken pleaded guilty, goes

hpb-2 Perlmutter-cross

into facts and details and mentions the name of the defendants and alleges certain other things.

THE COURT: We can call him into the robing room.

MR. BERGER: Before that, your Honor, I think we should have it understood, your Honor, and your Honor alone will ask any questions.

THE COURT: All right.

(In open court.)

THE COURT: Juror No. 9, would you come into the robing room.

(In the robing room.)

THE COURT: What is your name?

JUROR NO. 9: Stan Goldstein.

THE COURT: Mr. Goldstein, do you have a copy of the New York Times?

JUROR NO. 9: Yes.

THE COURT: WEre you reading it just now?

JUROR NO. 9: Yes. I was reading the editorial pages. I wasn't reading anything about this case.

THE COURT: Do you have the paper with you in the jury box?

JUROR NO. 9: I am not allowed to bring the

paper?

THE COURT: This is a courtroom. Do youhave it in the jury box with you?

JUROR NO. 9: Yes.

THE COURT: And you have not read anything about this case?

JUROR NO. 9: No, I haven't.

THE COURT: You may step outside.

JUROR NO. 9: May I ask a question?

THE COURT: Yes.

JUROR NO. 9: I understand whatyou are trying to say. I will not read the Times at all if it will affect my judgment.

THE COURT: You will recall yesterday that I instructed the jurors not to read any story about this case. I was just trying to find out if you had. Of course, if you haven't, that is the end of it.

JUROR NO. 9: I haven't read anything about it.

THE COURT: All right.

(Juror No. 9 left the robing room.)

MR. ENTIN: Your Honor, theTimes this morning did have a story on page 41. Maybe it wouldn't be a bad idea to inquire as to the rest of the jury and if they

hpb-4 Perlmutter-cross

did read it to disregard it. It is conceivable they started reading this article without knowing it involved this case, because the heading was "Ex-Wall Street editor pleads guilty." They may not have been aware that it involved the defendants until they got into the article.

THE COURT: Do you want us to now quiz all of the jurors?

MR. ENTIN: I amnot suggesting a quiz. You can ask a general question to the jury panel and instruct them if they read it to disregard it, or in the alternative not to read it when they get home.

THE COURT: I so instructed themyesterday and when we recess today I will instruct them again. You can remind me before they leave.

(In open court.)

MR. ENTIN: Your Honor, may I proceed?

THE COURT: Yes, you may.

MR. ENTIN: Would your Honor indulge me to repeat the last question.

THE COURT: Yes.

BY MR. ENTIN:

Q Do you recall answering certain questions in the testimony you have given, to Mr. Lowe, on June 13, 1973?

A Yes.

Q I believe the last question I asked you was as follows:

"Q Would it be some time within the period of August or September 1972?

"A That would be approximate.

"Q Where did you meet Mr. Zammas for the first time on the Power Conversion situation?

"A I am not sure. It could have been he and Billy, C.I. Oren & Company, or it might have been Phs Levy. I know I met Tommy at one of the offices."

A That is correct.

Q Do you recall those questions?

A That was my answer to the grand jury.

Q That was your answer.

MR. BERGER: If your Honor please, at this point I think it would be appropriate for Mr. Entin to make the appropriate representation where he obtained it.

My application, your Honor, is Mr. Entin make the normal representation with regard to the source of the material which he was using to question Mr. Perlmutter.

MR. ENTIN: It was provided by the U. S. Government pursuant to Rule 3500.

End 1A

THE COURT: I will explain to the jury. After a witness testifies for the government the government is required to give to defense counsel any statement made by the witness prior to trial, and that's what Mr. Entin is advising you. He is questioning the witness now about material turned over to him by the government after the witness testified.

Q Do you recall those questions and those answers?

A Yes.

Q You testified today that you met Mr. Zammas in the spring of 1972, meaning June, because I prefaced the question. Is that what your statement is today?

A April, May, June, somewhere in there.

Q Is there any reason why in 1973 the first time you met Mr. Zammas was August and September, and today the first time you met Mr. Zammas was May, April or June?

A Yes, very definitely.

Q What is the reason, sir?

A Basically, the first time I wasn't sure of the dates, which is why I made an approximation, and in fact, I recall that the meeting was definitely at Pohs, Levy, and it later came to my attention that Bill

Rodman was no longer at Pohs Levy after May and although I know the sequence of events I wasn't certain if there were four weeks, six weeks, eight weeks or ten weeks in between but I know there was a time lapse.

Q When you had originally told Mr. Lowe in 1973, when you were much closer to 1972, that you thought it was August, what you are telling me is your testimony there was based on your being unsure?

A I basically told him I thought there was a longer time lapse.

Q From the time of that statement to the time of today you had an opportunity to refresh your memory, is that correct?

A I had an opportunity to learn definite facts that Mr. Rodman was no longer at Pohs Levy after --

Q Who told you Mr. Rodman was no longer at Pohs Levy after May?

A The SEC attorney.

Q The gentleman in the brown suit?

A Yes.

Q When did he tell you this?

A At a meeting with Mr. Lowe.

Q When was this meeting?

A About a week ago.

Q To discuss your testimony for today?

A Basically, yes.

Q So the key mark that you used in 1973, which was less than seven months after the incident, was not an accurate key --

A The reason for my using the word "approximate" in there, I remembered it was warm and I remembered at that time I wasn't sure where the meeting had taken place and the more I thought about it, I became certain the meeting was at Pohs Levy.

Q Are you also sure that at the meeting at Pohs Levy you discussed the stock power conversion?

A Yes.

Q Are you sure you weren't discussing a stock called Bunting Stereo Systems at that time?

A No, I know that was a stock Bill Rodman and Tommy Zamas were involved in. We might have discussed that but Power Conversion was definitely part of the discussion.

MR. BERGER: Your Honor, I object and move the testimony be stricken that he knew that was the stock my client was involved in. I didn't ask the question. I shoudl not be bound by the answer, your Honor.

THE COURT: You can crose examine as to the basis of his knowledge.

Q Mr. Perlmutter, in your statement to Mr. Lowe that we referred to a moment ago, didn't you use a different key mark for the time of this conversaion? Do you remember, you testified earlier, that there had been a condition change in the interim from the time you met with Mr. Zammas and the time you brought Mr. Aiken to meet with Mr. Zammas?

A Yes.

Q Wasn't there another key that you had, something that occurred in the interim?

A The key were articles that were now being published recommending the stock in various media, and I believe Business Week was one of the publications that wrote an article on the stock.

Q Would this be in June?

A No. That would have been very shortly before we had the meeting.

Q I show you, Mr. Perlmutter, what purports to be --

MR. BERGER: I will object to any identification of anything until it is either in evidence or shown to the witness and identified by him.

MR. ENTIN: Certainly. No problem, Mr. Berger.

Q I ask you if you can identify this.

MR. BERGER: May we have it marked so the record is clear what it is?

MR. ENTIN: Yes.

(Defendant's Exhibit A was marked for identification.)

xx Q I ask you if you recognize this, perhaps.

A It is an article on Power Conversion. I couldn't tell you where it is from. It says "Business Week, August 12."

Q Is this the Business Week article that you were referring to?

A If that was the only article that Business Week wrote, then that would be, yes.

Q This article came out in early August of 1973. Does that help refresh your memory, August the 12th?

A Summertime.

Q What was the time frame or the time sequence from the time this article came out and you read it to the time you called to suggest another meeting with Tommy Zammas?

A Very truthfully, I don't think I ever read the article. I saw a lot of articles coming out on Power Conversion. I was kept abreast of the situation.

Q So you never read the article?

A No.

Q How were you keeping abreast of the situation?

A I ran into Tommy or saw Tom Zammas or Bill Rodman from time to time and they said the stock was doing well, the company was doing well, and I got copies of articles.

Q Are you acquaintedwith a corporation known as Colonial Foods, Inc.?

A I believe on the advice of my attorney, I have been advised to invoke the Fifth Amendment.

Q You are taking your Fifth Amendment privilege again?

A Yes.

Q On the grounds it might tend to incriminate you?

A I don't know the grounds. I just know that I am taking the Fifth Amendment.

THE COURT: Well, I explained to you that you could invoke your Fifth Amendment right with respect to any question the answer to which might tend to incriminate you. Do you understand?

THE WITNESS: Yes, your Honor.

A Based on that explanation, the answer is yes.

Q Were I to ask you any other question about Colonial Foods, you would invoke the same privilege?

A Yes, I would.

Q When did you first meet Tom Zammas?

A Rather than a date, I can tell you -- I met him when I was with the Executive Securities, and I believe it was in '71.

Q On what basis did you meet him?

A Tom Zammas was someone who traded heavily in stocks, had special situations in which he bought and/or

Q You are taking your Fifth Amendment privilege again?

A Yes.

Q On the grounds it might tend to incriminate you?

A I don't know the grounds. I just know that I am taking the Fifth Amendment.

THE COURT: Well, I explained to you that you could invoke your Fifth Amendment right with respect to any question the answer to which might tend to incriminate you. Do you understand?

THE WITNESS: Yes, your Honor.

A Based on that explanation, the answer is yes.

Q Were I to ask you any other question about Colonial Foods, you would invoke the same privilege?

A Yes, I would.

Q When did you first meet Tom Zammas?

A Rather than a date, I can tell you -- I met him when I was with the Executive Securities, and I believe it was in '71.

Q On what basis did you meet him?

A Tom Zammas was someone who traded heavily in stocks, had special situations in which he bought and/or

sold stocks and I was introduced to him as a very knowledgeable man in the stock market.

Q He was introduced to you as an investor?

A Yes.

Q You knew him prior to your introduction --

A Prior to my introduction I didn't know him.

Q At the time of your introduction you were led to believe he was an investor?

A And someone who put together deals.

Q Mergers, acquisitions?

A Any type like that.

Q Tom Zammas was no stranger to you when you had your first conversation with him, whether it was in April or August, is that correct?

A That's correct.

Q At that time Erik Aiken was no stranger to you either?

A That is also correct.

Q You testified Mr. Zammas contacted you and asked if you could set up a meeting with Eric Aiken, is that correct?

A I don't think I testified that way.

Q What did you testify to?

A I think basically I answered the question, "Was there a time when you and Tom Zammas had a discussion?"

Q Who approved whom?

A I certainly didn't approach him.

Q He approached you?

A Yes.

Q And he asked you if you could talk to Eric Aiken about doing an article on Power Conversion?

A Yes.

Q How did Tom Zammas know to come to you to get the job done?

A Tom knew I was friendly with Eric Aiken.

Q Did he know that your friendship extended above and beyond mere friendship and you could get articles placed in Value Line magazine?

A Not necessarily.

Q Was it not general knowledge on the street that one had to go through Stanley Perlmutter to get an article in Value Line.

A Absolutely not.

Q But Tom Zammas knew that?

A Tom Zammas came to me because he couldn't approuch Eric Aiken directly because they had had a

problem in the past.

Q Then we go back to the previous question: how would Tom Zammas know to approach you?

A Eric and I were friends.

Q Based upon that friendship he merely came to you, not based upon any prior performance?

A Between Tom Zammas, Eric Aiken and myself.

Q Yes, sir. When Sidney Stein first approached you to do an article in Value Line, on what basis did he approach you?

A Sidney Stein did not approach me.

Q How about Hal Winkler?

A I had a conversation with Hal Winkler and he said "Sidney Stein would like this done. He is willing to pay a sum of money."

Q Hal Winkler acted as a further intermediary to deal directly with Aiken?

A No, he had direct access to Eric.

Q So he went around you --

A I was to share in it.

Q How many other people had direct input into Eric to get articles in Value Line?

A I couldn't tell you.

Q Could there have been many?

MR. LOWE: Objection.

THE COURT: Yes, sustained.

MR. ENTIN: I withdraw the question.

Q You testified that you don't recall whether money was mentioned,or price, for a deal. Is that still accurate?

A I don't remember if a specific sum of money was mentioned, but there was mention that everything will be taken care of and something will be paid. I don't remember if the specific amount settled on was mentioned at that time.

Q Is there any reason you never mentioned this in your prior testimony?

A I believe I did. If I didn't, it was an oversight.

Q Despite the fact that that prior testimony was in July of 1973? You spoke to Mr. Aiken and Mr. Aiken indicated to you that he wouldn't do any more articles with Thomas Zammas, is that correct.

A That's correct.

Q When did you talk to Mr. Aiken the first time, approximately?

A It probably would have been within a day or so after I met with Tom Zammas.

Q Did you talk to him on the telephone?

A Probably not.

Q Did you meet him in person?

A Yes.

Q And you conveyed the possibility of an agreement here?

A Yes.

Q And this would have been in April, May or June of 1972?

A That would he correct.

Q At that time he said he would have nothing to do with Tom Zammas and there was no discussion of the stock, is that correct?

A No, discussion that I remember.

Q When was the second time you spoke to him?

A That would have been some time in August.

Q Had Tom Zammas come again and solicited you to put in a word to Eric Aiken?

A I would say no.

Q So isn't it a fact that some time in August, after you heard about the Business Week article, after you heard about an article in D. H. Blair, after you heard about an article in Appliance Masters, you decided this was a stock which could move and you personally

approached Eric Aiken again to make a deal, is that not correct?

A I approached him saying, "Let's see if the deal is still there."

Q You went back and approached Tom Zammas and said, "If he still wants an article, Eric will do it, but you have to pay him," is that correct?

A No.

Q What did you do?

A We went through the original discussion again and I said, "Eric would be willing to do it but because of your past problem, he has to have some type of guarantee."

Q So, in effect, you approached Zammas the second time around?

A Yes.

Q And he had not come back to you prior to that?

A Not that I remember.

Q You indicate that Eric told you that someone in Value Line had already been doing research on this article or this corporation?

A Someone had a file on.

Q Do you recall who it was?

A Not really. It was one of the girls in the office, or something.

Q Have you ever heard the name Celia Kupferberg?

A Yes, I have.

Q Could Mr.Aiken have mentioned she was the one doing the research?

MR. LOWE: I object to the form of that question. He is asking for a possibility.

THE COURT: Yes.

Q Did Mr. Aiken mention to you that Celia Kupferberg was the one doing the research?

A I am not certain.

Q You are not saying yes or no?

A I am not certain if she was the one. I know someone in his organization had a file.

Q Are you acquainted with a corporation known as Newport Chenical Company?

A Upon the advice from my attorney,I have been advised to invoke my Fifth Amendment rights.

Q On the grounds that it might tend to incriminate you?

A Yes.

Q If I were to ask you any further questions

about Newport Chemical Company, you would refuse to answer them upon the same ground, is that correct?

A That's right.

Q You testified that you had a meeting with Mr. Zammas and Mr. Aiken some time in early September at a restaurant in New York, is that correct?

A That's correct.

Q And the name of the restaurant was, if you recall?

A I don't recall.

Q You don't recall the name of the restaurant?

A No.

Q Wasn't it an Italian restaurant?

A Yes, it was.

Q How do you remember that?

A We had Italian food.

Q At the time of that meeting what was discussed?

A What was discussed --

Q Did Eric agree to do an article?

A The end result was that Eric, if he got a guarantee of payment, which would be in the form of a thousand shares of stock guaranteeing that he would get paid if he did the writeup, yes, that was the end result

of the meeting.

Q That was the end of your knowledge of this particular meeting, is it not? You left shortly thereafter and went home?

A That's right.

Q At the time you left the restaurant had there been a deal made?

A I would say yes.

Q Did a thousand shares of stock change hands at the table while you were sitting there.

A The agreement to make the deal was made but the deal was predicated on the thousand shares changing hands.

Q Isn't it a fact that at that meal Mr. Aiken wanted to go and do research on the company?

A He said he would look into it again, yes.

Q Didn't he say he would not guarantee that any article could be published?

A He could never guarantee any article would be published. Everything had to meet with approval by his boss.

Q You mean he couldn't guarantee the publication of an article?

A I don't think so.

Q How do you know that it had to meet the approval of his boss?

A He had told me that many times.

Q So he didn't have the final say?

A In effect, the way I understood it he would present one or two,or as many as he had, articles to the boss, and he usually could manage to get written when he wanted to, but he could always be overruled by the head of the firm.

Q So there was no guarantee at that time, and if there was any deal, it was only based upon ultimate performance?

A The entire deal was based on performance, yes.

Q You testified that during the months of August and September you had occasion to visit the offices of C. I. Oren, is that correct?

A Yes.

Q That was a brokerage house?

A Yes, it was.

Q And there you say you saw Mr. Rodman and Mr. Zammas, is that correct?

A Yes.

Q Could you describe for the jury, please,

the physical layout of the C. I. Oren office?

A Basically, it was kind of small for a brokerage office. They had several machines, Nasdec machines -- I don't know if they were Nasdec, but they might have been Bunker, and there were three people, sometimes four, sometimes five in the back room answering phones, making phone calls, doing whatever had to be done.

Q Did Mr. Rodman have an office there?

A He was in the back room with the other people. He had one section which I assume was his.

Q Cubicle?

A If you had to describe it that way, it was a desk with a machine, plus whatever --

Q Any partitions around it?

A I don't think so.

Q What was your purpose in going to C. I. Oren?

A There were many stocks that my company was trading that they were trading and my office -- you know, I was in and out of New York all the time.

Q Was there a separate office for customers to sit in?

A There was a reception area, if I remember correctly, there was an office for the principal of the company on the side, and I don't recall a separate --

unless you call a reception area for customers, I don't know --

Q Did Mr. Zammas have a desk?

A I would say yes.

Q You would say yes?

A I would say he was normally in front of a desk with a machine and a phone.

Q He would be sitting at a desk and there was a machine there?

A And a phone.

Q Was there a name plate on his desk that said Thomas Zammas?

A Not that I can remember.

Q Did he have an office?

A He had an office in the same respect Bill Rodman had an office.

Q Was Tom Zammas holding himself out to you as an employee of C. I. Oren?

A No.

Q Did he ever hold himself as an employee of C. I. Oren?

A No.

Q Did Bill Rodman hold himself out as an employee of C. I. Oren?

A No.

Q You never asked either of them what they were doing there or they worked there?

A I assume anyone that is trading through a brokerage house in the back office is employed there.

Q You assumed that?

A Yes.

Q You didn't know that for a fact?

A No.

Q You couldn't say so for a fact here today, could you?

A No. I would certainly have to assume it.

Q But you couldn't say so for a fact, is that correct?

A I never saw their employment contracts, no.

Q You say you saw Tom there and you saw him on the telephone, is that correct?

A Yes.

Q Did you stand in front of his desk?

A Actually being in the office you were almost in front of everybody's desk, yes.

Q Was there a lot of noise and jumble?

A A lot of conversation, yes.

Q But you stood there and you listened so specifically that you heard this man buying and selling Power Conversion stock?

A As I said previously, I heard many discussions regarding Power Conversion Corporation both with Tom Zammas and Bill Rodman.

Q Where were you standing when you were listening to this?

A Sometimes next to Bill Rodman, sometimes next to TomZammas, sometimes in themiddle of the office, which couldn't have been more than 12 to 15 feet wide.

Q Did you hear him making orders or sales or did you hear him discussing the corporation?

A I couldn't specifically say he made an order or a sale but I heard him discussing the stock and again my impression was he was buying and selling shares.

Q You were a customer's man?

A Yes.

Q A customer's man is someone who deals with the public and helps in the purchase and sale of stocks -- do you think it unusual that a person who has a large interest in a stock would talk about it on the telephone?

A The only unusual thing, I would say, is that he would be in the back office of a brokerage house.

Q You never heard of a good customer or a good investor having immediate access to their broker?

A Yes, I have heard that.

Q And sometimes if their broker is in the back room they will go in and sit near their broker?

A I have seen customers sitting next to their brokers. I have never seen customers doing what I felt would be involved in trading.

Q What you felt Mr. Zammas was doing, not what you knew he was doing, isn't that correct?

A I believe that is incorrect. Unless every ticket Mr.Zammas was writing for his own account, then I believe whatyou said is incorrect.

Q You don't know what he was doing?

A I can't be certain. I didn't read the name on the tickets.

Q He could have been buying or selling for his own account?

A Conceivably.

Q Just as conceivably he could have been doing that as anything else?

A To be realistic, no, but to be factual, I don't

know.

Q Was Mr.Zammas ever in the back office of Executive Securities?

A Yes.

Q Did he work for Executive Securities?

A No.

Q Was he on the payroll of Executive Securities?

A Not that I know of.

Q Did you find it unusual to have him in the back office of Executive Securities?

A What I found unusual was that he seemed to have a pipeline into whatever Executive Securities was doing but I never saw him write out a ticket sitting in the back office of Executive Securities.

Q What makes you assume he was doing anything different in the back office of C.I. Oren than in your office?

A When I was with Executive Securities I basically saw what went on in the back office and I never saw Mr. Zammas write a ticket. That also doesn't mean that he never did write one.

Q Some time in late September youfound out that an article was being published on Power Conversion, did you not?

A Yes.

Q And Mr. Aiken toldyou he was going to be pub-

lishing the article?

A He told me a tentative publication date.

: Using that information, did you purchase any shares in Power Conversion?

A No, I did not.

Q Did Mr. Aiken generally give you advance information of stocks he was going to write about in Value Line?

A I believe I had some advance information at times, yes.

Q Do you recall what stocks you had advance information on?

A Could have been anything from a big board stock to anything he happened to be writing.

Q Did you give your customers information based upon the information you received from Mr. Aiken?

A My customers basically traded in stocks because my company was recommending them.

Q Did you buy and sell stocks for your own account based upoh the informationgiven you by Mr. Aiken?

A On advice from my attorney, I want to take the Fifth Amendment on that.

Q Are you acquainted with a corporation known as Basic Leasing?

A On advice ofmy attorney, I am going to take the Fifth Amendment on that.

Q If I were to askyou any further questions about your dealings in Basic Leasing,you would take the same position?

A Yes, I would.

MR. ENTIN: Your Honor, may I have a moment to confer with my client?

THE COURT: Yes.

(Pause.)

Q Mr. Perlmutter, did you ever testify before the SEcurities and Exchange Commission on the Power Conversion question?

A I don't believe I was ever called .

Q Are you acquainted with a corporation known as Building & Land?

A Upon advice of my attorney, I would like to invoke the Fifth Amendment.

Q And if I were to ask you any further questions on Building & Land,you would continue to invoke the Fifth Amendment, is that correct?

A Yes,I would.

Q Do you have any knowledge of a company known as Magic Marker?

A Upon advice from my attorney, I would like to invoke the Fifth Amendment.

Q In your agreement with the United States Government didyou tell them or tell them that you told them everything you knew about possible stock situations in which you were involved?

A Upon my agreement with the U. S.Attorney, I told him everything he asked me and he wanted an answer to.

Q He never asked you these questions and you never volunteered any information with regard to any of these other situations that you have invoked the Fifth Amendment on?

A No, I believe the U. S.Attorney didn't want this information so that I would -- again, it is not part of my agreement.

Q You believe he didn't want to know about any other crimes you may have committed?

A No,I don't know that, I think he may have wanted to leave me open.

Q Do you know anything about a corporation known as Hills Brothers?

A Upon advice of my attorney, I would like to invoke theFifth Amendment.

Q And if I were to ask you any further questions

about Hills Brothers,you would continue to invoke your Fifth Amendment privilege against self-incrimination?

A That's right.

Q Do you know Jack Silbiger?

A The name doesn't ring a bell.

MR. ENTIN: Your Honor, I have nothing further of Mr. Perlmutter.

THE COURT: Mr. Berger, do you care to cross-examine?

MR. BERGER: No, your Honor, I have no questions of this witness.

THE COURT: Do you have any redirect?

MR. LOWE: Yes,your Honor.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Perlmutter, just so that the jury can know what everyone has been talking about here, I noticed that during your cross-examination some terms were used which may not be clear to everyone.

To start with,you used the phrase "over-the-counter" stocks. Would you explain what that means?

A Those are stocks that are not listed on the New YorkStock Exchange or the AmericanStock Exchange, which were traded by many houses, each of whom had their

rmb-6 Perlmutter-redirect

individual quotes, not necessarily being the same quotes on the prices of the stock.

Q Then you later on used the term "big board stocks." What did you mean by that?

A The big board is the New York Stock Exchange.

Q Those would be stocks listed on the New York Stock Exchange?

A Yes.

Q In the course of your being questioned about a company called Ricoh Time, you used the phrase "private placement." Wouldyou explain what you mean by that?

A A private placement occurs when a company is usually in its infancy or needs cash to develop to the point where it might be able to go public, and many of my customers at that point made substantial investments in the firm Ricoh Time Corporation.

Normally, if the company works out, the leverage on their money is usually very, very good, which is why they would go into something like that.

Q What is the opposite of a private placement?

A It would be a public offering, I would think.

Q Where the stock is offered to the public at large instead of a few people, is that right?

A Yes.

Q In the course of your cross-examinatinn you testified to the fact that you observed Mr.Zammas in what you referred to as the backroom at C.I. Oren writing tickets. Would you explain what writing a ticket is in the securities industry?

A Well, they are --

MR.ENTIN: Objection. That is a fact not in evidence and I would like to have that response read back.

THE COURT: It is not the testimony?

MR. ENTIN: He never testified he saw Mr. Zammas write tickets. He talked about writing tickets but he never said he saw him writing one.

THE COURT: You can ask him now.

BY MR. LOWE:

Q Did you see Mr.Zammas write tickets at C.I. Oren?

A Yes, I believe I said so before.

Q Would you tell us what it means to write a ticket in the securities business?

A Basically, there are two types of tickets. One is an order from a broker to another broker, one broker buying the stock to fill a customer's order. The other would be a ticket someone would give to a brokerage house for a customer of the brokerage house in order to buy or sell a certain amount of stock.

rmb-8 Perlmutter-redirect

Q Is a ticket sort of an order form?

A Yes.

Q During the course of your cross-examination you exercised your Fifth Amendment privilege at least a half dozen times, if not more. Did you understand that there may be matters which you were involved in for which you may be prosecuted despite the agreement you have with the Government?

A Very definitely, sir.

Q As a matter of fact, Mr. Perlmutter, what were you told about any other matters other than your dealings with Aiken?

MR. BERGER: Objection, your Honor. The Government has gone ahead and put ina document which says that there were no other oral understandings, as I recall, or conversations, or that that document replaced all other prior oral understandings -- I don't recall exactly, but there was such a statement in it and I think that the document must speak for itself as to what the agreement was.

THE COURT: You say there is such a statement as contained in this question in the document itself?

MR. BERGER: I think so,your Honor.

MR. LOWE: There is,your Honor, but there was also a question on cross-examination about whether or not

he told the United States Attorney certain things and I think that he started to answer that question, but I don't believe that exactly the circumstances surrounding his answer to that question were brought out.

MR. ENTIN: Your Honor, I would suggest to the Court that if he answers this question and goes further they may open the door on cross-examination and a wave of the Fifth Amendment privileges on recross.

THE COURT: Well, the question is limited to what his understanding with the Government is regarding these other matters and what he told or what they discussed, as I understand it.

In view of the questions you asked the witness on cross-examination, the Government can go into that.

MR. ENTIN: I would agree with Mr. Berger that the agreement speaks for itself and shouldn't be expounded upon and I ask the Court make a ruling on that.

THE COURT: That is not what I had in mind. I thought there was something in here to the effect that -- Paragraph 6 is what I have in mind.

MR. ENTIN: I would have to look at it, your Honor, and we don't have copies of the agreement.

THE COURT: Here is the document. Is that right, did you have paragraph 6 in mind, Mr. Lowe?

MR. LOWE: Yes, it is paragraph 6.

(Pause.)

MR. ENTIN: Your Honor, paragraph 10 indicates as follows: "This agreement expresses" --

THE COURT: No, no. I said that is not what we are talking about. We are talking about paragraph 6. Do you want to read it?

MR. ENTIN: "Should evidence develop that Perlmutter has admitted any violations of law other than participation with Aiken in arranging for or receiving bribes for writing favorable articles about various securities, the United States Attorney may prosecute Perlmutter for any or all such violations but the admissions in this document shall not be used against Perlmutter in any prosecution except for perjury."

THE COURT: That is what Mr. Lowe is about to ask him and you went into that on cross-examination and I ruled he can ask him about it, because you went into it on cross-examination.

2B

BY MR. BERGER:

Q Mr.Perlmutter, you had been asked on cross-examination by Mr. Entin whether or not you told the Government anything in some other matters that he was asking you about to which you were taking the Fifth Amendment today. If I recall correctly your response was no, you didn't.

A That is correct.

Q And that you were told not to. What were you told specifically about that subject?

A I was told specifically that the Government, if they developed evidence would prosecute me to its fullest capacity and not to tell them anything because it didn't preclude the Government using what I told them against me.

MR.BERGER: I have no further questions.

RECROSS-EXAMINATION

BY MR. ENTIN:

Q Pursuant to paragraph 6 of that agreement, Mr. Perlmutter, isn't it a fact that each and every stock which I asked you about and upon which you took the Fifth Amendment was a stock in which you were involved either directly or indirectly with Eric Aiken?

A No.

Q Let's talk about the individual stocks.

A I refuse to answer the questions on the individual stocks based upon my attorney's advice.

MR. ENTIN: Your Honor, paragraph 6 of this agreement indicates that should evidence develop that he has comitted any violation of law other than participation with Aiken in arranging or receiving bribes, it spells out three stocks on top plus a list of five to be supplied by someone else. I want to ask him specifically about these stocks, whether he was involved with Eric Aiken, because I think it goes to the gut of the Government's agreement.

THE COURT: Just a minute. I don't know that I am following that. The agreement says that he has told the Government about certain matters in which he was involved with Eric Aiken. There is a paragraph 6 which relates to other matters about which he has not told the Government, andyou have asked him about those other matters and he has invoked his Fifth Amendment privilege as to those. You asked him if it wasn't a fact that as to all of those other matters he was involved with Aiken and he said no.

MR. ENTIN: Now I am going to go into each one, and ask him whether he was with Aiken because on those

hpb-3 Perlmutter-recross

I believe he has immunity, as to anything he did with Eric Aiken based on this particular document. Is that what it says?

MR. BERGER: It does not say anything he did with Eric Aiken. It says "any violation other than participation with Aiken in arranging or receiving bribes or arranging favorable articles."

Not "anything."

THE COURT: With that clarification, Mr. Entin, you may proceed.

BY MR. ENTIN:

Q Were you involved with Eric Aiken in the stock of Autotrain?

A May I have a clarification in line with the agreement?

Q It is not one of the names of the stocks in the agreement.

A I refuse to answer the question.

THE COURT: YOu have to complete it.

A (continuing) On the ground of the Fifth Amendment.

Q Were you associated with Eric Aiken with the stock of Associated Food Stores?

A As I told the U. S.Attorney, that is a name I

heard mentioned by Sidney Stein. I am not sure if it was one of the stocks that he selected.

Q Were you associated with Eric Aiken with regard to the stock of Magic Marker?

A No.

Q Were you associated with Eric Aiken with regard to the stock of Newport Chemical?

A Again, in answer to that, it might possibly have been one of the stocks that Sidney Stein chose, but I am not certain.

Q Were you associated with Eric Aiken with regard to the stock of Building & Land?

A As far as receiving anything, I never received anything for it.

Q Wereyou associated with Eric Aiken with regard to that stock in the article he published in Value Line?

A I need a definition of "associated." I knew he was writing it up. Other than that--

Q Other than thatyou had nothing to do with it?

A I knew the situation.

Q And you were involved in it?

A That is a question again what you mean by "involved."

MR. ENTIN: Nothing further.

THE COURT: Is there anything further? If not, the witness may step down.

Next witness.

MR. LOWE: The Government calls Eric Aiken.

W I L L I A M E R I C A I K E N, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

MR. LOWE: May I proceed, your Honor?

THE COURT: Yes, you may.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Aiken, how were you employed in 1972?

A I was the executive editor of a publication called Selection and Opinion, which is part of the Value Line Investment Survey.

Q Who was your employer?

A Arnold Bernhard & Co.

Q Could you tell us what the Value Line Investment Survey is?

A The Value Line --

Q Excuse me. Let me withdraw that question.

Could you tell us what theValue Line Investment Survey was in 1972?

A In 1972 the Value Line Investment Survey was an encyclopedic research service for investors covering most of the stocks that are listed on the New York Stock Exchange.

Q In particular, could you tell the jury what Selection and Opinion was in 1972?

A Selection and Opinion was an independent eight-page investment advisory service that was mailed with the bigger service, the Value Line Investment Survey. It incorporated stock recommendations, economic information and other articles and matters of interest to investors.

Q What was your income from Arnold Bernhard & Co. in 1972?

A Approximately $29,000.

Q Mr. Aiken, have you pleaded guilty to a crime?

A Yes, I have.

Q To what crime did you plead guilty?

A Fraud.

Q In connection with what?

A The case now pending here, Power Conversion.

Q Have you entered into an agreement with the Government, specifically with the United States Attorney relating to your testimony in this case?

A Yes, I have.

hpb-7 Aiken-direct

Q Mr. Aiken, I am showing you a document that has been marked Government Exhibit 1A for identification. Would you look through it and tell us whether you can identify that document?

A Yes, this is acopy of the agreement I signed with you with my signature on it.

Q Do you recognize anyother signatures on it?

A Yes. I recognize your signature, John A. Lowe, and my attorney, Louis C. Pulvermacher.

MR. LOWE: The Government offers Exhibit 1A in evidence.

MR. BERGER: Your Honor, if we are given an opportunity to read it before cross-examination, I have no objection. I don't want to take the jury's time to read it now.

THE COURT: All right. Do you have copies for the defense counsel?

MR. LOWE: I don't, your Honor. Unfortunately I left them in my office by mistake. I will get copies though.

xxx (Government's Exhibit 1A was received in evidence.)

MR. LOWER: May I read it to the jury?

MR. ENTIN: I object, your Honor. It speaks

for itself.

THE COURT: Overruled. We have been through that before.

You may proceed.

MR. LOWE: Once again, ladies and gentlemen, it is headed "Memorandum of agreement."

(Mr. Lowe read Government Exhibit 1A to the jury.)

Q Do you know a man named Stanley Perlmutter?

A Yes, I do.

Q What was your relationship to Perlmutter in 1972?

A It was both a personal and business relationship.

Q What was the nature of your business relationship?

A Well, we would go into stock deals frequently in which I would make recommendations and split the proceeds.

Q Proceeds of what?

A Generally they were in the nature of a bribe, to me, to write up the stock.

Q Did there come a time when you had a conversation with Stanley Perlmutter about a company known as Power Conersion, Inc.?

A Yes, there did.

Q When and where did the first of such conversations take place?

A InSeptember of 1972, he called me at my office at Value Line.

Q Where is your office at Value Line?

A It is at 5 East 44th Street, in Manhattan.

Q What did Perlmutter say to you and what did you say to him on that occasion?

A Perlmutter said to me that he wanted me to meet with a man named Tom Zammas for the purpose of discussing a writeup of the stock called Power Conversion. I told Perlmutter at the time that I wasn't particularly interested in meeting Zammas. I hadn't seen him for a couple of years and the reason I wasn't interested in meeting with him was because I still hadn't been paid for a deal that we had done back in 1970. In any event --

MR.ENTIN: Your Honor, I will object to that and I will ask for a side bar on that.

3A

THE COURT: The question has been asked and answered.

MR. ENTIN: I ask the answer be stricken. I need a side-bar conference.

(At the side bar.)

MR. ENTIN: Your Honor, this question and answer relates to a company called Casa Balla. The deal allegedly took place in 1970 or '71, allegedly. The violation as charged in this particular indictment is a violation of 77(q)(b), which is publishing an article when you have received a gratuity from a broker or a dealer.

In 1970 Zammas was not a broker-dealer and I don't think Mr. Lowe is prepared to prove this, but I think he has to prove it before there is any allegation or allusion of a criminal act. It is a requisite necessity. He has to show Zammas was a dealer in '70 and '71 before he can bring this testimony out.

THE COURT: It is a prior similar act, not identical.

MR. ENTIN: It is not even similar because of the fact in order to commit this crime an investor under that statute can pay all the bribes he wants and not be guilty of anything, but a dealer cannot, and Mr.

Lowe knows that's what the statute says.

If I have ten shares and I want to see an article about it and I pay somebody $20,000, I am not violating that statute, and by his publishing he is not violating the statute.

If he is going to bring forth prior deals and claim they are similar, he has to show Zammas was at all times a dealer.

MR. LOWE: Your Honor, first of all, Mr. Entin forgets that there is more than one statute involved in this case. There is no requirement that Zammas be a dealer in order to violate the mail fraud statute. It is only a requirement of the specific securities law that it is involved.

MR. ENTIN: Your Honor, the mail fraud statute is not violated unless 77(q)(b) is violated, because there is no mail fraud because there is at that point no duty for anybody to do anything different unless 77 is violated first. You have no mail fraud on the other end.

THE COURT: I don't follow that.

MR. LOWE: The government's position is exactly to the contrary on that. In the total absence of the existence of 77(q)(b) it would be a mail

fraud to mail out an article purporting to be an independent object of opinion of the stock when in fact it had been the result of a bribe. That would be a fraud on the people who received the article, whether there was a securities law or not.

THE COURT: I would think so.

MR. BERGER: Your Honor, a prior similar act is admissible to prove identity, knowledge, lack of mistake. Those issues have not been raised in this case. The probative effect or value is by far outweighed by the prejudicial effect of this testimony.

Now, if there were only one defendant in this case, then perhaps in the court's discretion the testimony might be admitted, but the admissibility of this testimony is strictly within the province of discretion of the court.

I ask the court to take into consideration the fact that there is another defendant in this case and that there will be a very severe prejudicial wash-over effect onto Mr. Rodman, and because of the fact that the issues of identity, lack of knowledge, concept, intent have not been raised and are not at issue, and because of the prejudicial effect and because of the slight probative value, I believe that the court in its

discretion should not permit this testimony in.

MR. LOWE: Your Honor, Mr. Berger left out one of the ways in which a prior similar act can be brought in. The evidence I am offering is conversations which are part of the commission of the crime charged. The initial conversation between Perlmutter and Aiken, Aiken says, "I'm not going to do this deal because I don't trust Zammas because of the last time."

When he gets together with Zammas he says, "I'm not doing the deal unless there are guarantees, because I didn't get paid the last time."

That's why there were guarantees and they went to the apartment and he gave him stock up front, because of the prior situation.

THE COURT: This is what you are going to bring out, the prior situation?

MR. LOWE: It is all part of that.

THE COURT: The prior situation for which Aiken didn't get paid relates to --

MR. LOWE: To Casa Bella. I don't believe the name of the stock is the subject of the conversation. The conversation doesn't go further than it has already gone. The next time it comes up is at

the restaurant meeting when there is Perlmutter, Aiken and Zammas together, and basically what Aiken says is, "Tommy, why should I trust you now since I didn't get paid the last time. I'm not doing anything now unless I get guarantees."

Zammas says a few apologies and says, "I'll give you guarantees," et cetera.

That conversation is an integral part of the planning and commission of the crime that we are proving in this case.

THE COURT: You are not attempting to prove a prior similar act?

MR. LOWE: Not exactly, your Honor. I am producing evidence that happens to relate to a prior similar act.

MR. ENTIN: He has announced by the papers filed in the court file that he intends to produce evidence of the prior similar act.

THE COURT: Mr. Lowe, I think we ought to clarify the record as to what you are trying to do. The evidence, now that I understand what it is, would be admissible as evidence of other crimes, wrongs or acts provided in Rule 404(b) of the new Federal Rules of Evidence, relating to other crimes and so forth.

That provides that such evidence is admissible for proof, such as motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

So it is admissible to prove a plan on the part of the defendant, or preparation, knowledge. Plan and knowledge, I think, it would come within those categories. If you are offering to prove a prior similar act, it is admissible for that purpose.

As to the defendant Zammas, I would have to give a limiting instruction to the jury.

MR. BERGER: Your Honor, one more thing. After the plea bargaining agreement was finished reading I tried to get in my objection. I would like the jury to be instructed again to the effect that the plea bargain is not evidence against any of the defendants as you did prior.

(In open court.)

THE COURT: Ladies and gentlemen, before we proceed, I want to give you instructions to the effect of two matters.

First, going back to Government's Exhibit 1A, which is the agreement between the witness Mr. Aiken, who is now on the stand for the government, with regard to his understanding with the government with respect

to any other crimes in which he may have been involved and his participation in this particular crime, as I instructed you with respect to a similar agreement made between the government on a prior witness, Mr. Perlmutter, the statements set forth in these documents are not evidence or proof against the defendants who are now on trial. The statements contained in these documents relate only to an understanding which each witness has with the government as to its own criminal conduct. The witnesses are here to testify now as to their participation in the instant crime and to testify as to what they knew about the defendants on trial. It is up to you to believe the witnesses or not.

The second matter that I want to bring to your attention is that the government is about to ask this witness about a prior similar matter which the government claims is a similar act to the one in question here participated in by the defendant Zammas and the witness who is now testifying.

The government is permitted to show, if it can, that a defendant on trial participated in a prior similar act, which was wrongful, for the purpose of showing that the defendant had knowledge of what occurred

in the instant situation, or that he had a plan to do similar things, or that it was part of an overall plan on the part of the defendant, and that the instant charge was a part of a broader plan.

With respect to the defendant Rodman, this testimony regarding some prior transaction between the witness Aiken and Zammas,and perhaps others, does not apply to the defendant Rodman.

But with respect to this testimony further of a prior similar act, I want to point out that the defendant Zammas is not on trial for that prior similar act of which the witness will testify. Therefore, when you consider this testimony, you have to consider it only with respect to the itnent or knowledge or possible plan on the part of the defendant Zammas. In other words, you consider this evidence in a limited fashion. That is, when you consider whether he had knowledge of the present bribery or alleged bribery, or whether it was a part of a broader plan on his part.

With that understanding, the government's attorney may proceed to ask this witness about this prior similar act which the government claims Mr. Zammas participated in with this witness.

You may proceed, Mr. Lowe.

MR. LOWE: Thank you, your Honor.

BY MR. LOWE:

Q Before I get directly into that, Mr. Aiken, have you told us all you remember about the conversation with Mr. Perlmutter?

A I wasn't finished with my answer. Can I get a read-back?

(Record read.)

MR. ENTIN: Your Honor, I think we are entitled to limiting instructions outside the presence of Mr. Zammas.

THE COURT: Well, all right.

As I instructed you earlier, ladies and gentlemen of the jury, there are times when a witness testifies as to certain statements made to him out of court at a time when the defendant on trial was not present, and in this instance he is about to tell us about a conversation which he had with Mr. Perlmutter about Mr. Zammas at a time when Mr. Zammas was not present.

As I told you earlier, with respect to any such testimony, the court is taking such testimony, receiving it subject to connection. That means subject to a later determination by the court there is sufficient other independent evidence, independent of

any such hearsay, to connect the defendant Zammas with the crimes charged in the indictment.

You may proceed.

BY MR. LOWE:

Q Can you finish your answer to the question that has been pending?

A Yes. In any event, Stanley Perlmutter told me there was a good deal of money involved and that Tom Zammas, working in partnership with a man named Bill Rodman, had the box on the stock; there wasn't a lot of risk.

MR. BERGER: Objection.

THE COURT: Box on the stock?

THE WITNESS: Control.

MR. BERGER: At this time I request the court give limiting instructions in regard to Mr. Rodman and the testimony be stricken with regard to Mr. Rodman as pure hearsay.

t4a rma Aiken-direct 180

THE COURT: You are referring to the last question and answer?

MR. BERGER: The last question and answer.

THE COURT: Read the last question and answer, please.

(Record read.)

THE COURT: I don't understand your objection now. The objection is to hearsay?

MR. BERGER: My objection is to pure hearsay, yes, your Honor. There is a discussion between two people and my client was not present and --

THE COURT: Your client's name was mentioned. Did I hear that correctly?

MR. BERGER: That's right, your Honor.

THE COURT: Again, ladies and gentlemen, the objection is that the witness has just testified to a conversation he had with Perlmutter out of the presence of the defendant Rodman and the court again is accepting this testimony subject to connection. That is, later, the court will determine whether there is sufficient independent evidence to connect Mr. Rodman to these charges, in which case, if the court so finds, the court will then instruct you that you may consider this testimony as to Mr. Rodman, but at the moment it is taken

subject to connection.

All right, you may proceed.

Q Will you continue, Mr. Aiken, please?

A Finally I told Perlmutter I would go to a meeting with Zammas.

Q During the course of your last answer you mentioned the previous arrangement with Mr. Zammas. Would you tell the jury, first of all, when that arrangement took place?

A In 1970, I think late summer, early fall.

Q What was the nature of that arrangement?

A The arrangement involved the recommending of a new issue of stock called Casa Bella Imports and there was a bribe involved.

Q What was the offer that was made to you and by whom was it made?

A Tom came to me with --

MR. ENTIN: Your Honor, I object. I don't see that this fits into any of the criteria you indicated before was proper to go into a prior incident.

THE COURT: I don't understand your objection. The witness is about to tell us about a prior incident?

MR. LOWE: Yes.

MR. ENTIN: I suggest there is no predicate established and no connection, your Honor.

THE COURT: Overruled.

Q You may answer.

A Thomas came to me and told me that there was money to be made by recommending the shares of Casa Bella Imports as a new issue, and I inquired, you know, approximately how much money, and the sum that I was told at that time was something over $20,000. I can't remember the exact amount at this point. And I agreed to talk to the principal about doing a writeup.

Q Did you eventually do a writeup on that company?

A Yes, I did.

Q Do you recall when?

A Some time in the fall of 1970.

Q Did you receive any of the money that had been promised you?

A I got $1000.

Q Getting back to 1927, Mr. Aiken, subsequent to your conversation with Stanley Perlmutter, did you meet with Mr. Zammas?

A Yes, in a restaurant called La Fortuna, off

Fifth Avenue on 41st Street in New York City.

Q I guess we are at that point. Do you see Mr. Zammas in the courtroom?

A Yes, I do.

MR. ENTIN: Concede identity.

MR. LOWE: Thank you, Mr. Entin.

Q When did this meeting at La Fortuna take place?

A In September of 1972.

Q Who was present?

A I was there, Tom Zammas was there and Stan Perlmutter was there.

Q What time of day was it?

A It was after working hours. I would estimate the time around 5:30 p.m .

Q Was it during the week or on a weekend?

A It was during the week.

Q What was the conversation at La Fortuna? What did you say, what did Sammas say, what did Perlmutter say?

A Well, for the first 10 or 15 minutes we were there we just more or less exchanged pleasantries, and after that Stan said, "I think Tom would like to talk to you about Power Conversion, Eric."

I looked at Zammas and said, "Tom, why should I trust you on a deal like this after what happened on the Casa Bella deal?"

He said, "Oh, well, the old man and his son really ran me through a wringer."

I said, "But still you could have called."

He didn't have much of an answer for that, but we started talking about Power Conversion, and I said, "Gee, what do you want to do to the stock? You have it pretty high now." The stock was in the low 40s or high 30s. And he said, "Rodman and I are going to take it to 120," and I said --

MR. BERGER: Objection, your Honor. Same objection, hearsay --

THE COURT: Same ruling. I have explained to the jury I am taking any statement made out of the presence of Mr. Rodman subject to connection.

A So I said, "Okay, what's the deal?" And he told me, or he said it would be $15,000 in cash for the writeup plus an override on 20,000 shares. An override is -- in other words, I could have gotten the difference between any increase in price that occurred between the time that the recommendation was made and any time I decided to cash in chips or exercise the

override.

THE COURT: You will have to explain the override. I didn't understand and I don't know whether the jury did. You have to understand that we are laymen and we don't understand these terms.

A As part of the payment, in addition to the $15,000 in cash, in effect they would grant Stan Perlmutter and me a call on 20,000 shares. So at any point, assuming I went ahead with the deal, if I said, "Okay, now is the time I went to cash in," they would take the price at the time I informed them of that, subtract the price at which the recommendation was made, and I would receive the difference in cash times 20,000.

Q To help clarify it a little better, Mr. Aiken, you spoke of the date as on which the recommendation was made. What date are you referring to there?

A The publication recommendation date.

Q On that date the stock of Power Conversion had a particular market price, is that correct?

A Yes.

Q And your arrangement was that on some subsequent date you would be able to say "I exercise this override" as you call it --

A Always assuming that the stock went up.

Q And you would then receive from Mr. Zammas the amount of money representing the difference between the price on the day you exercised your override --

A Yes.

Q -- and the price the stock was at on the day your article came out?

A Yes.

Q So that if the price went up, you stood to make money?

A If the price went to 50, from the 39 and a fraction where it was issued, the override would have been worth approximately $10.50 per share.

Q And this was on how many shares?

A 20,000 shares.

Q And you stood to make, under your assumed set of facts, roughly a quarter of a million dollars?

A In theory, yes.

Q If that happened, if the price went up?

A Yes.

Q Now that we have hopefully explained that, can we get back now to the substance of your conversation during this meeting at La Fortuna.

A I stopped around override, is that correct?

Q Yes.

A So I said, I told Tom that it might be a good idea if he could give me some guarantees. The $15,000 in cash wasn't supposed to be paid until after the publication appeared. So he offered, or Tom told me that he could give me a thousand dollars in cash that evening and that Stan Perlmutter and I would be allowed to hold a thousand shares of Power Conversion stock in a street name, and I said that sounded pretty reasonable. He said, "I can give you a thousand dollars this evening and I have got the shares."

So I said, "Okay, I guess we have a deal."

THE COURT: Excuse me, Mr. Lowe. At this time we will take a brief recess. The jury is excused for

ten minutes.

(Jury leaves the courtroom.)

THE COURT: The witness is excused for ten minutes.

(Recess.)

(In open court; jury present.)

THE COURT: You may proceed, Mr. Lowe.

MR. LOWE: Thank you, your Honor.

BY MR. LOWE:

Q Mr. Aiken, what happened after dinner?

A Well, Perlmutter left by that time and Tom Zammas and I got in a cab and went to an apartment house on 35th and Lexington Avenue.

THE COURT: Keep your voice up, please.

Q What happened when you got to that apartment house?

A When we got to the apartment I was introduced to a man named Henry Goldfarb and he was described to me as being a principal in a brokerage firm called Equitable Equities, and Tom also told me, "They are doing a job in Power Conversion, too."

Q When you refer to Tom you mean Mr.Zammas?

A I meanTom Zammas. Tom left the living-ro-m for a few minutes and Goldfarb and I chatted about inconse-

quential matters, the market, and things like that.

Q Then what happened?

A Oh, within a few minutes Tom called to me from the kitchen and said, "Come here." So I went out in the kitchen and he handed me a thousand dollars in $100 bills and three stock certificates for Power Conversion totaling 900 shares.

Q Was there any conversation at this time?

A He said -- Tom told me the rest would be forthcoming when I finished the article and he said,"I know it is only 900 shares, but I will get you the other 100 to round it off as soon as I can."

I said, "Well, that is no great problem, 900 shares is still a lot of shares."

Q What happened after that?

A We went back out into the living-room and I said good night to Goldfarb and left the apartment, got in a cab and went down to the West Village, where I went to a bar called the No Name, and there I met the owner, a man named Dan LaTieri, and I had a few drinks and before I left I had loaned him $500 of the thousand or more I had in my pocket.

Q Showingyou Government Exhibit 1B for identification, can you identify those documents?

A Yes. These are the stock certificates I got from TomZammas.

Q What are those documents on top of the stock certificates?

A Transfer sheets, I believe.

Q WEre they with the stock certificates when you got them?

A To the best of my recollection.

MR. LOWE: The Government offers 1B in evidence.

THE COURT: Any objection?

MR. ENTIN: Defendant Zammas has no objection.

MR. BERGER: Defendant Rodman objects on the basis of hearsay and requests a limiting instruction, requests an instruction that the fact that these certificates were delivered to Mr. Aiken and in no way is any evidence against the defendant Rodman.

THE COURT: Same ruling, subject to connection.

(Government Exhibit 1B was received in evidence.)

Q Mr. Aiken, did you write and publish an article about Power Conversion?

A Yes, I did.

Q Showing you Government Exhibit 1E, for identi-

fication, can you identify this exhibit?

A Yes. This is a copy of the September 29, 1972, Section and Opinion with the recommendation of Power Conversion stock.

Q Is the article contained inthis exhibit about Power Conversion, the article you wrote?

A Yes, it is.

MR. LOWER: The Government offers 1B in evidence.

End 4B

MR. ENTIN: No objection.

THE COURT: L et it be received.

xxx (Government Exhibit 1E was received in evidence.)

Q Mr. Aiken, when you had completed the article which is contained in Government Exhibit 1E, did you speak with Mr. Zammas?

A Yes. I got a phone call from Tom Zammas the day before the official publication date of the article, but at that time I had advance copies, and --

Q Where was this conversation?

o He phoned me at my office.

Q What was the conversation at that time?

A I told TomZammas that it was done and he said "Great," and I said "I can only let you have six samples because I won't have a full supply until next week." And he said, "That's no problem. Perhaps we can meet because I am coming up tonight."

And I said that was a problem because I was going to go to the opera that evening with the girl who later became my wife, and Zammas said, "Well, why don't we meet after the opera." So after some conversation we decided to meet at a place called The Ground Floor.

Q Where is The Ground Floor Cafe?

A It is in the CBS Building at 52nd Street, on Sixth Avenue.

Q Did you meet Mr.Zammas at The Ground Floor?

A Yes, I did.

Q When did you meet him there?

A After the opera was over, approximately 11:30 P.M.

Q What was the date?

A The date was September 28, 1972.

Q How do you remember that date?

A Well, my fiance was friendly with Martino Arroyo who was singing that evening in Un Balla in Mascagra in the Metropolitan Opera, and that was the opera my wife and I went to see that evening. I aslo remember it because it was the date before the official publication date.

Q Which according to Government Exhibit 1E was September 29, 1972, is that correct?

A That's correct.

Q Who was present at TheGround Floor that evening?

A I was there, my wife, who was then my fiance was there, TomZammas was there, and a girl named Dusty Palumbo.

Q Tell us what happened at the Ground Floor that night.

A Well, as I recall,my wife and I got there before Tom and his girl, and when they got there, we chatted, had a few drinks. The girls ordered food. About ten minutes, 15 minutes after his arrival he said, "Come on, let's go back." So, Zammas and I went back to the men's room where he gave me $14,000 in $100 bills and fifties. It is a fairly large men's room at the Ground Floor, and we were out in the foyer and hesaid, "I've got another project for you. We need to park 25,000 shares stock stock and it is worth a dollar a share."

I said, "Well,that really isn't my side of the business. Value Line runs mutual funds, but I hardly ever was involved on the investing side of it, and I said is there any problem," and he said no problem, we just have to park it for a little while before the split comes through.

By this time we moved out into the bar area, and we kept talking about this parking situation, and I kept saying really there wasn't a hell of a lot I could do to help him park that many shares or even a few shares.

THE COURT: Do you want to explain to the jury what you mean by "park shares"?

THE WITNESS: Sure. When you park stock, what you do is take it off the market and that is usually done

by getting a friendly portfolio manager or money manager to agree to buy the stock sometimes for a monetary consideration, sometimes with a guarantee against loss or other inducement.

But, in effect, it is a means of getting stock off the market.

Q What happened at the end of that conversation?

A I don't really remember that there was any end. I had left him with no particular -- I said it wasn't my thing and there wasn't any end because the girls came and found us. We had been gone for 20, 25 minutes, and what happened was that each woman collected her man and we left.

Q Did you give Mr. Zammas anything that night?

A Yes. I gave him six advance copies of the September 29th issue.

Q How did you receive the money you received that night?

A In a plain brown wrapper. There was $14,000 in hundreds and fifties.

Q What did you do with the money?

A I stuffed most of it in my inside coat pockets.

Q What did you do with it thereafter?

A Well,I gave $2000 to Susan.

Q Who is Susan?

A Susan is now my wife. I gave her that in the cab. I again went down to the No Nme bar and as I had agreed, I loaned Dan LaTierie another $2000 to go with the original $500 and then the next morning I put $9500 in the bank.

Q Mr. Aiken, showing you Government Exhibit 1F for identification, can you identify that document?

A Yes. It is a copy of my deposit slip for $9500.

Q Is that the deposit to which you just referred?

A Yes, this is the deposit. There is also a record of my pay check.

MR.LOWE: The Government offers 1F in evidence.

MR. BERGER: Your Honor, the defense objects based on the fact it is not the best evidence. It is a photocopy.

MR. LOWE: If your Honor will refer to the new Federal Rules of Evidence, photo-reproduced copy is what is known as ad plicate under the rules, and it is admissible just as an original.

THE COURT: What is the rule?

MR. LOWER: I am looking for it, your Honor. I refer your Honor to Rule 1001, paragraph 4, referring to duplicates.

THE COURT: Objection overruled. Let is be received.

xxx (Government Exhibit 1F was received in evidence.)

Q Mr. Aiken, on the day following your meeting at theGround Floor Cafe, did you speak with Mr.Zammas?

A Yes. He called me on the phone in my office.

Q What was the conversation at that time?

A Well, he was sort of chuckling. He said I showed the writeup to Rodman and he liked it so much he is thinking of buying stock.

MR. BERGER: Objection, your Honor. At this time I request the Court give the full limiting instruction as the jury had only heard it once and I will appreciate it if they would hear it again.

THE COURT: I believe I have instructed the jury several times that statements made and testified to by this witness out of the presence of Mr. Rodman are being taken subject to connection.

Is that whatyou had in mind?

MR. BERGER: Yes,your Honor, and also at this time it is not evidence against Mr. Rodman and will not --

THE COURT: We are receiving it certainly as to Mr.Zammas and it is taken as evidence subject to later

connection to Mr. Rodman.

MR. BERGER: Thank you, your Honor.

Q Mr. Aiken, did you give any of the money you received for doing this article to Mr. Perlmutter?

A Yes. I gave him $3500 and forgave him another $3500 worth of money that he owed me.

Q Showing you, Mr. Aiken, Government exhibits previously marked, 1G, 1H and 1J for identification in each case. Can you identify those exhibits?

A Yes. 1G is the check I made out to cash to give Perlmutter the $3500.

1H is my book of stubs with the entry $3500 cash, and in parenthesis "Dan."

1J is my monthly statement which reflects these transactions.

MR. LOWE: The government offers Exhibits 1G, 1H and 1J in evidence.

THE COURT: Any objection.

MR. ENTIN: No objection on behalf of defendant Zammas.

MR. BERGER: No objection on behalf of defendant Rodman.

THE COURT: Exhibits 1G, 1H and 1J are received, there being no objection.

(Government's Exhibits 1G, 1H and 1J were received in evidence.)

xx Q Mr. Aiken, for how long a period of time were you the executive editor of Selection and Opinion?

A Close to four years.

Q How many different securities did you write up during the period of time that you were in that position, approximately?

A Anywhere from three to five a week, times 50; 150 a year. Close to 400.

Q Can you tell the jury whether in your experience in writing articles about various securities the article that appears in Government's Exhibit 1E, relating to Power Conversion, is a favorable article or not?

MR. BERGER: Objection.

MR. ENTIN: Objection. It calls for opinion. He is not established as an expert.

THE COURT: Just a minute. He is not established as an expert in what, writing articles about stock?

MR. ENTIN: Ir determining whether an article is favorable, unfavorable, making that kind of opinion. The only testimony we have, your Honor, is he was editor for this newsletter for three or four years. That in itself doesn't establish any kind of expertise.

THE COURT: Overruled.

MR. BERGER: May I state the ground of my objection, your Honor?

THE COURT: Yes.

MR. BERGER: Whether the article is favorable or not is a question of fact for the jury. It is not to be testified to by the witness as that would be subjective, or his opinion. His opinion is not relevant. The material is in evidence. It speaks for itself. The jury will have an opportunity to read that and they will have an opportunity to determine for themselves whether it is favorable or not favorable.

THE COURT: Overruled.

A I would answer the question definitely it is favorable insofar as it advises purchase.

Q Could you point to specific language advising purchase?

A Excuse me. I am going to have to read through it to find it.

Q May I see it for a moment?

A Sure.

Did you want me to read this?

Q Yes. First point out specifically, as best you can identify it, the page number and what column you are reading from.

A Page 246, September 29, 1972 issue, and it is in column 1, about three-quarters of the way down the page.

MR. BERGER: May it please the court, I at this time object to the witness reading a portion of the article for the purposes of pointing out what he believes is favorable. The entire article is in evidence and I again repeat it is the province of the jury to determine if the article on a whole is favorable or not favorable.

THE COURT: Overruled.

A "Though the stock is quoted at a gaudy 69

times estimated current year share earnings, it is selling at only a bit over 13 times our projection for 1973 net. Moreover, if our three to five-year estimate of $4.50 a share is in the ball park, the multiple is down around 8.5 times. Clearly this is not a situation for conservative or income-minded investors. But venturesome accounts who are seeking superior appreciation potential over the intermediate to longer pull and able to incur the substantial risks involved in emergent advanced technology issues could find Power Conversion shares a rewarding commitment."

Q While we are on the sbuject of whether this article is favorable, Mr. Aiken, did Mr. Zammas express any displeasure at it?

A Not to me.

Q What was the price of Power Conversion stock at when you published that article?

A 39 and a fraction. It's hard to get the exact price because it's an over-the-counter stock and is a bid and asked. So you split the difference.

Q What happened to the price of the stock subsequent to that time?

A Within a week it fell to a price around 5.

THE COURT: Would you read the last ques-

tion.

(Question read.)

THE COURT: Susbsequent to what time?

Q Subsequent to the time you published the article.

A Within a week it fell to around 5.

MR. LOWE: I'm sorry, your Honor. My question was not clear.

MR. BERGER: If it please the court, the witness doesn't seem to have a problem with the question.

THE COURT: I had a problem with it. It didn't have any time. That's why I had the reporter read it. I don't know what time he was referring to. "Subsequent" is not a time. Subsequent to what?

MR. BERGER: To the article is what --

THE COURT: He has just clarified it. That's why I asked him to clarify the question.

Q Subsequent to the publication of the article and any communications you had with Mr. Zammas at about that time, did you at a later date have occasion to discuss this article with Mr. Zammas again?

A Yes. I ran --

THE COURT: Just a moment.

MR. BERGER: Objection, your Honor. If

Mr. Lowe is withdrawing the prior question I wish he would withdraw it. He is not now asking the question he was asking before; he is asking a different question. And there was a response to the first question that allegedly is being clarified or I am confused, your Honor.

THE COURT: I believe the witness answered the restated question.

Will you read the record, Mr. Reporter.

(Record read.)

MR. LOWE: Your Honor, prior to going further to this conversation, the government would like to state that this portion of Mr. Aiken's testimony is offered solely against the defendant Zammas and is not offered at all against the defendant Rodman.

THE COURT: What he is about to testify to?

MR. LOWE: That's correct, your Honor.

BY MR. LOWE:

Q When and where did this conversation take place?

A In the bullpen area of Newport Securities, which is a brokerage firm in New Beach California.

Q Who was present?

A I was there, Tom Zammas was there and a man

named Burton Kozak.

Q I think I interrupted before I got out when the conversation took place. Could you answer that?

A It was the day after the dollar was devalued again. So it was in early February of 1973.

Q What was the conversation you had with Mr. Zammas at that time?

MR. ENTIN: Objection, your Honor. I would like to approach the side bar.

(At the side bar.)

MR. ENTIN: Your Honor, I believe that Mr. Lowe is about to go into a subsequent arrangement or deal, not even a prior one.

MR. LOWE: No, your Honor. I am offering this as an admission on the part of Mr. Zammas, having to do with the transaction for which he is on trial here.

MR. ENTIN: I thought he was introducing something else. My apology.

(In open court.)

Q What was the conversation you had with Mr. Zammas at that time?

A Well, the conversation generally was about Power Conversion and its untimely skid, and Tom says,

"Well, I got wiped out. I had a lot of puts that I had to walk away from." And then he said, "The SEC is after me, but you don't have to worry because I can't do anything, you know -- I can't do anything to you without bearing to myself."

MR. LOWE: Thank you, Mr. Aiken. I have no further questions.

THE COURT: Since it is so late we will recess now until 10 o'clock tomorrow morning. I would like to ask the jurors to arrive 10 minutes before 10 o'clock so we can begin promptly at 10. There was a juror late this morning.

Another thing I want to remind you about is, you are not to read any newspaper stories or listen to any television or radio reports regarding this case, if that should occur, and if you do so inadvertently, when you come in in the morning, please do not tell your fellow jurors about it but let me know immediately.

Similarly, if anyone should telephone you or approach you about this case, please do not comment and tell your fellow jurors about that and let me know immediately.

We will recess now until 10 o'clock tomorrow morning, and the jurors are instructed to arrive 10 minutes

before the hours so we can begin promptly at 10 o'clock.

You are excused now until 10 o'clock tomorrow morning.

(The jury left the courtroom.)

THE COURT: The witness is exused until 10 o'clock tomorrow morning. Arrive at 10 minutes before.

THE WITNESS: Yes, your Honor.

THE COURT: We should put on the record, Mr. Lowe, the 3500 material which you have turned over to defense counsel up to this point.

MR. LOWE: Yes, your Honor. We can do that.

Perhaps we can do this, your Honor. I have a list of all of the 3500 material of the case. What I was proposing to do was to introduce that list at the end of the case and make it a part of the record that would reflect everything that was turned over during the case. Right at the moment there are things on that list that have not been turned over and would necessarily reveal things I'm not prepared to reveal at this time.

THE COURT: You can't tell us what you have turned over? You have turned over the 3500 material

as to the first witness, Mr. Perlmutter, I assume.

MR. LOWE: Yes, your Honor. And the 3500 material as to Mr. Aiken. The list has in detail exactly what each document -- it is just a little longer than those two witnesses, and I also don't seem to have it in front of me.

THE COURT: Just put on the record with respect to those two witnesses or the numbers. That's all I had in mind.

MR. LOWE: Certainly, your Honor.

With respect to Eric Aiken the government turned over Exhibits 3501, 3501A, 3501B, 3501C, 3501D. 3501E, and that's it.

THE COURT: With respect to Government's Exhibit 3501F, that is not 3500 material with respect to the witness Aiken. The court has reviewed that and rules that it is not 3500 material and the clerk is instructed to seal the document for purposes of appeal.

If there is nothing further, we will recess until 10 o'clock tomorrow morning. Please arrive before 10 o'clock.

MR. LOWE: With respect to Perlmutter, I turned over 3510A.

(Adjourned to July 30, 1975, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Stanley Perlmutter	57	75	155	161
William Eric Aiken	165			

EXHIBIT INDEX

Court's Exhibit	Identification	In Evidence
1	41	
Government		
5A		59
1A		167
1B		190
1E		192
1F		197
1G,1H,1J		199
Defendant		
A	133	

CLERK'S COPY
RETURN TO COURT REPORTERS
ROOM 803 FOR FILING

Tk 1a

hpb

United States of America

vs.

74 Cr. 887

William Eric Aiken, et al

New York, New York.
July 30, 1975 - 10:00 A.M.

(Trial resumed.)

(In open court; jury absent.)

MR. ENTIN: Your Honor, one preliminary matter before the jury is brought in. It has come to our attention and it is probably through inadvertence there is an additional 3500 material that is existent which we have not been provided with. What we have been provided, the transcript before the Securities and Exchange Commission in Philadelphia, at page 31, the present witness, William Eric Aiken, testifies that he has had a prior appearance before the SEC on matters which were under investigation by the SEC, which we believe was either the instant investigation, Power Conversion, or Casa Bella, to which inference has been made and if that is so, we would like to see a transcript.

MR. LOWE: There is no such transcript. You have already been given hand copies of handwritten notes

of SEC people who interviewed Mr. Aiken. He never made a formal appearance in which a transcript was taken in any of those matters.

MR. ENTIN: I don't believe I have received handwritten notes of the SEC people. I will check. I received typed memoranda.

MR. LOWE: Typed from handwritten notes. That is it.

MR. ENTIN: This is date October 12, 1974.

Your Honor, if I could call your attention to page 31.

THE COURT: Of what?

MR. ENTIN: Of the 3500 material which we have been provided with.

THE COURT: I don't have a copy.

MR. ENTIN: As I say I am sure it is an inadvertence.

MR. LOWE: YOu have everything that exists. Mr. Aiken came to the SEC and spoke to people. Everypiece of paper that is a reflection of what Mr. Aiken had to say has been turned over to you. There is no other transcript. In fact, the transcript you are referring to was turned over to you not really as 3500 material, but because as you well know, Mr. Aiken gave false testimony on that

occasion and that is why that transcript was given to you in the first place.

MR. ENTIN: Might we make inquiry outside of the presence of the jury. It says "Have you ever testified before the SEC before in any proceeding such as this?

"A Yes, I have."

I have received no other transcript of a SEC proceeding such as the one he testified in in this transcript.

The date of this is June 12, 1974.

THE COURT: So that you are thinking he may have testified prior to that date?

MR. ENTIN: Yes,your Honor.

THE COURT: We can bring the witness in and ask him.

W I L L I A M E R I C A I K E N resumed.

BY THE COURT:

Q Mr. Aiken, Mr. Entin would like to inquire of you whether you testified before the SEC prior to this trial and if so, on what occasions? Is that right?

MR.ENTIN: Yes,your Honor.

BY MR. ENTIN:

Q Mr. Aiken, on June 12, whenyou appeared before

the SEC in Philadelphia they asked you a question as to whether or not you had ever testified before the Securities and Exchange Commission in a proceeding such as that, and I would assume that was with a court reporter and you answered yes, you had.

Could you elucidate as to when you did testify before the SEC prior to the June 12, 1974 date?

A Yes. Some time in March of 1973, I went down to see Peter Schaeffer at the New York office of the SEC.

Q Was there a court reporter present, do you recall?

A Not as far as I remember.

Q Do you recall if Mr. Shaeffer made handwritten notes of the March 1974 meeting?

A I don't think it was March -- was it --

Q March of '73.

A '73, yes. I believe he did. If he didn't, maybe Mr. Lerner did, but I can't be sure.

Q Is Mr. Lerner also an SEC attorney, to your knowledge?

A Yes.

MR.ENTIN: Your Honor, we have nothing with regard to a March 1973 meeting either with Mr. Shaeffer or Mr. Lerner.

MR. LOWE: The Government represents that there

is nothing in the form of either transcript or notes of that occurrence, and if necessary, I am prepared to put Mr.Shaeffer who was there to testify to the fact that he deliberately didn't take any notes that day, under my instructions.

MR. ENTIN: And there was no memorandum made or recorded at that meeting?

MR. LOWE: That is correct.

THE COURT: Bring in the jury now.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen. Are you ready to proceed?

MR. ENTIN: Yes,your Honor, I am.

CROSS-EXAMINATION (continued)

BY MR. ENTIN:

MR. ENTIN: Your Honor, may I see the agreement Mr. Aiken entered into with the United States Government?

THE COURT: Yes. Mr. Lowe has it (handing).

MR. LOWE: Government Exhibit 1A.

Q Mr. Aiken, yesterday you testified to this jury that you entered into a memorandum of agreement with the United States Government, is that correct?

A That's correct.

Q What was your understanding of the nature of

this agreement that you entered into with the United States Government?

A My understanding was that I would plead guilty to four charges and would not be prosecuted on other charges.

Q When you say "would plead guilty to four charges," haveyou at this time pleaded guilty to four charges?

A No, I have not.

Q At this time how many charges have you pleaded guilty to?

A One.

Q When you informed this jury that you will not be prosecuted on other charges, how many other charges in your mind are you talking about?

A Oh, probably seven or eight.

Q Does that include Federal income tax violation?

A Yes.

Q And it is your understanding that in this agreement you are protected from the Internal Revenue Service, any of their prosecution, is that correct?

A That's correct.

Q And in this agreement you admit to not filing income taxes for several years?

A Yes, that's correct.

Q Were you required in this agreement to divulge

by name all stocks for which you did articles in return for consideration?

A That's correct.

Q And in this agreement, you list the following stocks: Associated Foods, Atlantic Industries, Casa Bella Imports, Colonial Foods, Imperial -- I would assume Imperial Industries.

A That's correct.

Q Magic Marker, Newport Chemical, Power Conversion, Ricoh Time, andRoyalAtlas, is that correct?

A That's correct.

Q Other than these particular stocks I have mentioned, you have done no other articles for which you have received consideration, is that correct, sir?

A That's correct.

Q And it is your understanding with the Government that in the eventyou did other articles for which you received consideration for which you didn't tell Mr. Lowe, this agreement will be null and void and you may be prosecuted?

A I could be prosecuted on any situation which I didn't divulge, yes. That is my understanding.

Q If you didn't vigule a situation this entire agreement becomes null and void, correct, sir?

A I would have to ask my attorney about that. I am not sure.

Q Did you agree to testify truthfully in return for this agreement with the United States Government?

A Yes, I did.

Q And did you agree to testify truthfully to Mr. Lowe personally and in this agreement?

A Yes, I did.

Q Mr. Aiken, is this the first agreement you have ever had with the United States Government?

A Yes, it is.

Q By that you mean a written agreement, do you not, Mr. Aiken?

A That's correct.

Q There was a prior oral agreement, was there not, sir?

A That's correct.

Q And this oral agreement was agreed to between yourself and Mr. Lowe in 1973, isn't that correct, Mr. Aiken?

A That's correct.

Q And in that agreement, you told Mr. Lowe, did you not, that there were only two stocks from which you have ever received consideration for writing an article?

A That's correct.

Q And you told him those two stocks were Casa Bella Imports and Power Conversion?

A That is correct.

Q And you lied to Mr. Lowe when you told him that, did you not, Mr. Aiken?

A That is correct.

Q And you lied to him as you are sitting there today, testifying to us, straight out, is that correct, Mr. Aiken?

A I don't understand the question.

Q At the time you lied to him --

THE COURT: Read the question.

(Question read.)

A I don't understand the question.

Q When you lied did you do so in the same manner as testifying today, sitting there, looking him right in the eye?

A There isn't -- rephrase the question again, please.

MR. ENTIN: Strike the question.

End 1A

Q What was the basis of that 1973 oral agreement with Mr. Lowe?

A Based on Power Conversion.

Q What were you to plead to under the terms of that agreement?

A To the best of my recollection, one count of fraud.

Q And did you agree to testify truthfully when called to testify in anything that Mr. Lowe asked you to cooperate in?

A There was no discussion on that point.

Q You never promised to be truthful if you are called upon to testify?

A It never came up.

Q Did you tell Mr. Lowe at that time that you had told him about all of the deals that you had made?

A If I did, I assured him that I hadn't left anything out.

Q And wasn't it a fact that Mr. Lowe informed you that if he later found out that you had lied to him, he would abrogate the agreement?

A Well, he put it more strongly than that.

Q How did he put it?

A He said, "I'll have your ass."

A Yes.

Q Did they ask you whether you received money from him with regard to Magic Marker?

A That's right.

Q Did you inform him you did not?

A That's right.

Q Did you inform them you knew him only on social basis?

A That's correct.

Q Did you inform him you only played golf and tennis and socialized with him?

A Not golf and tennis.

Q Did you use the words "sun and surf"?

A Yes.

Q Did you have business dealings with Mr. Silbiger?

A Yes.

Q You lied about that?

A Yes.

Q Did they ask you about the Dubins, Henry and Burt?

A Yes.

Q Did they ask you if the relationship with them was financial with regard to several items?

Q So help you God?

A Yes.

Q And did you tell the truth?

A No, I didn't.

Q You committed perjury, is that correct, sir?

A That is correct.

Q With regard specifically to the perjury you committed before the Securities and Exchange Commission in Philadelphia, did you tell them that you had received no money on Casa Bella Imports from either Burt or Henry Dubins?

A I would have to see the transcript. I think we hedged that question.

Q I am showing you page 137.

MR. LOWE: For the record, I think we are referring to Government's Exhibit 3501 --

MR. ENTIN: Yes.

A You asked me about Casa Bella?

Q Did they ask you about Casa Bella in that particular inquiry?

A I don't recall.

Q Did they ask you about a relationship with a man Jack Silbiger?

A Yes.

Q Mr. Aiken, I assume he has had it, is that correct?

A Indeed he has.

Q Because you did lie to him, did you not?

A Yes, I did.

Q You also at that time, or shortly thereafter, had an opportunity to testify before a Securities and Exchange Commission investigation in the City of Philadelphia with regard to a security known as Magic Marker, is that correct?

A That's correct.

MR. ENTIN: I would indicate to the jury any questions I am asking now with regard to the Magic Marker situation were provided as required by law by the United States Government pursuant to 3500 as his Honor instructed you yesterday that the government is obligated to give the defendant.

Q When you testified before the Securities and Exchange Commission in Philadelphia, did you raise your right hand as you did when you came in here yesterday and swear to tell the truth?

A Yes, I did.

Q Did you swear to tell the whole truth?

A Yes.

A I don't recall if they asked with regard to several items, but the transcript you showed me said that I denied having received financial consideration for Canaveral, which is correct.

Q That is correct?

A That is correct.

Q And did you not receive financial consideration for Casa Bella?

A I don't recall.

Q Did you receive financial consideration for Casa Bella?

A Yes, I did.

Q You testified yesterday, Mr. Zammas made the deal for Casa Bella, is that correct?

A He arranged the deal, that's correct.

Q You didn't say arranged yesterday, did you, Mr. Aiken? Don't you recall yesterday Mr. Lowe asked you if Mr. Zammas set up the deal and your response was yes?

MR. LOWE: I don't think that's a fair reading of what I asked him. It certainly wasn't the question I put to him.

Q Do you recall yesterday Mr. Lowe asking you specifically and in these words, "Did you receive any

money on Casa Bella?" and "Yes, $1000"? Was that your response?

A Yes, it was.

Q Did you clarify for the jury yesterday who you received the $1000 from?

A I was never asked the question.

Q Did you receive it from Mr. Zammas?

A No. It came from a man named Burt Dubins.

Q In 1971 what was Mr. Zammas' interest in Casa Bella, if you recall?

A I don't understand the question.

Q What was his interest in Casa Bella that he approached you?

A It wasn't in 1971.

Q In 1970?

A 1970.

Q What was his interest?

A He was trying to help Burt Dubins get the stock public.

Q Was he introduced to you as a public relations man?

A No. At the time I met Zammas he was executive vice president of Canaveral Industries.

Q He was a corporate executive, not a dealer

in securities?

A That's correct.

Q And he spoke to you about the company Casa Bella, is that correct?

A That's correct.

Q You indicated that you received $1000 on Casa Bella. Isn't it a fact you actually received considerably more at a later date?

A Yes.

Q Who did you receive considerably more from?

A Burt Dubins.

Q For what service did you receive considerably more?

A It was the original deal.

Q The original deal?

A That's correct.

Q You never went back to Zammas to get it?

A I couldn't find him.

Q You went directly to Burt Dubins?

A That's correct.

Q Burt Dubins paid you how much?

A In the nature of two or three, it might have been as much as $4000. I would have to check.

Q You are telling the truth now?

A That's correct.

Q What else did you get that was beneficial to you from Mr. Dubins at a later date?

A Dubins introduced me to Silbiger.

Q Did you forgive almost 23,000 additional that was owed you for that one little introduction?

A That's correct.

Q So actually if Zammas had any connection at all with Casa Bella it was to the extent of $1000. After that you and the Dubins picked up and ran with the ball pretty well?

A Not the Dubins. Dubins.

Q Who is Jerome Allen?

A Jerry Allen is a stock promoter.

Q What stock did he promote?

A Specifically with me?

Q Yes, sir.

A A stock called Atlantic Industries..

Q Is that on my list that I read you?

A Yes, it is.

Q And that's one specific stock deal you didn't tell Mr. Lowe about back in 1973, is that correct?

A That's correct.

Q That's the one Mr. Lowe caught you lying

about, isn't it?

A That's correct.

Q Would you like to tell us how Mr. Lowe caught you lying about that?

A Jerry Allen testified.

Q He testified and then Mr. Lowe knew that you had not told the truth, he confronted you with this, and then you admitted that you had lied about that, correct?

A That's correct.

Q Who is Herb Trassenfeld?

A He is a broker, presently employed at Drexel, Burnham.

Q Didyou have a business relationship with Herb Trassenfeld back in the early 1970s?

A That's correct.

Q What was the nature of your business relationship with Herb Trassenfeld?

A He was a broker. I can't recall his affiliation at the time but he is the man who introduced me to Zammas.

Q Introduced you to Tom Zammas?

A That's correct.

Q He was doing the same work in the Canaveral

International situation?

A What do you mean?

Q Promoting the Canaveral International stock?

A I think he bought some and put it in his clients' accounts. I wouldn't say promoting it.

Q Who is the principal in Canaveral International?

A It's a publicly-owned stock so there aren't any principals, but I believe the controlling shareholders would be the Dubins family.

Q The same Dubins you received substantial funds from and gave forgiveness to in Casa Bella?

A It was his father and uncle.

Q But you knew them both?

A Yes, I did.

Q Now, Value Line did more than one article, did it not, with regard to Canaveral International during the period of time you served as executive editor?

A Yes, but that's normal.

Q Pardon?

A That's normal. If a stock is recomm3nded, it's routinely followed up.

MR. ENTIN: Please mark this as Defendant's B for identification.

(Defendant's Exhibit B was marked for identification.)

xx Q I show you what is purported to be a Value Line selection and ask you if you can identify it.

A This is the original recommendation of Canaveral dated May 22nd.

Q At the time you did t h is original recommendation how well did you know Trassenfeld?

A Reasonably well.

Q Had Trassenfeld introduced you to the stock?

A Yes, that's correct.

Q Did Trassenfeld have a substantial position in the stock himself, either beneficially or directly, to your knowledge?

A I have no knowledge about it.

Q Did he urge you to write an article on this particular matter?

A No, he didn't urge me to write an article. He told me that it looked like a recovery situation and I should call Zammas, who was then executive vice president.

Q And did you do so?

A Yes, I did.

Q Did Zammas pay you any money for doing this

particular article?

A No, he did not.

Q The article on Casa Bella Imports you did was done on September 25, 1970, is that correct?

A To the best of my recollection, that would be about the date.

Q And the first Canaveral article done by you was done on May 26, 1970, is that correct?

A That's correct.

Q When did you feel that Mr. Zammas had cheated you out of your money on the Casa Bella situation? Did you feel that as late as January 1, 1971?

A Is there something magical on that specific date? I don't know that you are getting at.

t2a

Q Well, on January 1, 1971 you did another article on the Dubins' company, Canaveral International?

A I told you it was routine to cover a special situation every three months subsequent to its recommendation until either sale is recommended or profits are taken.

Q I can understand that. So then it would have been normal for you to do,after the article on January 1, 1971 on Canaveral,another article on Canaveral in March or April of 1971? Wouldn't that have been normal?

A It would have been, but it was not inflexible.

Q That is correct, because the next time you did an article and Canaveral was on September 10, 1971, a little update. What would the normal procedure have been after the update? Would you have waited two, three or even six months to review the stock again?

A Yes.

Q Why on September 7th, seven days later, did you feature Canaveral International on the front page of Selection and Opinion?

A My guess would be that it was an industry study probably having to do with mobile homes.

Q Your guess would be that or is it a fact, Mr. Aiken, that you had been doing substantial business

with the Dubins and they paid you for the article on Canaveral?

A No.

Q That would be incorrect?

A Yes.

Q Would it also be incorrect, Mr. Aiken, to tell this jury that you never prepared a special article on Canaveral International for exclusive distribution in Europe using the Value Line logo and sent it over to Europe for Mr. Dubins? Would that also be incorrect?

A No, I sent -- I do remember writing Henry an article -- not an article, a letter, Henry Dubins, commenting, I think, 1 on the Euro-bond issue.

Q You used the Value Line imprimatur?

A I used Value Line stationery.

Q You received a consideration for this letter?

A No.

Q You didn't arrange for the printing and you didn't arrange for the distribution --

A Distribution of what?

Q A copy of this article or letter, as you call it, that went to Europe.

A Oh, we received a report from our European person, Wilton Weeks, that Dubins was using the letter,

but we had nothing to do with that.

Q When did you prepare this letter form?

A When you say prepare a letter, you don't prepare a letter, you write a letter.

Q When did you write this letter?

A I don't really remember. It was probably prior to the time Henry had given me the prospectus or subsequent to the time he gave me the prospectus.

Q Before or after the great interest in the stock in Value Line, the several articles?

A You are making a mistake if you are thinking there is a connection between the two.

Q I think that is for someone else to determine. What is your educational background?

A I have a Bachelor's degree in English from UCLA.

Q Where did you get that degree?

A UCLA.

Q When did you get it?

A 1960.

Q Any postgraduate work?

A No.

Q Any special courses in stock analysis?

A No.

Q What was your employment background prior to your employment with Arnold Berhardt & Company?

A In order?

Q Where did you work before?

A McGraw-Hill, for Business Week. I was in public relations for a year, and then I went to work for an investment advisory service called the Research Institute Investors Service. Then I returned to McGraw-Hill, where I became executive editor of Electronics Magazine, and then I went to Arnold Bernhardt & Company, where I worked for the Value Line Investment Survey.

Q When you were with McGraw-Hill the first time, what was your job title and responsibility?

A Assistant editor for Business Week.

Q What was your salary?

A I think I was making something like $7800 a year when I left.

Q What was your reason for leaving?

A My wife had had a baby and I went to work for a public relations agency.

Q And the name of that public relations agency?

A Daniel J. Edelman.

Q Did that do work in the securities field?

A Yes.

Q You were a securities public relations man for a period of time?

A It is called financial public relations.

Q Oh, it is? I am sorry. What was the function of a financial PR man?

A To interest security analysts and financial writers in the stocks of the companies represented by the agency.

Q How did you go about interesting people in stocks in financial public relations and selling?

A I wrote letters, made phone calls, had personal contact work with them.

Q Took people to dinner, to shows, to ball games.

A Hardly ever to shows and ball games. It is not quite as glamorous a business as people seem to think.

Q Did you ever pay anybody off?

A No, I didn't.

Q From there you went to Research Institute Investors Service?

A Yes.

Q Is that a publication somewhat like Value

Line?

A Yes. It is now defunct.

Q What sort of work did you do for them?

A Wrote up stock recommendations.

Q You are now getting into the securities area?

A Absolutely.

Q While you were with them did you take any payoffs?

A No, I didn't.

Q You went back to McGraw-Hill?

A Yes.

Q What did you do for them?

A Worked for Electronics Magazine.

Q Was that involved with securities?

A Not to any great extent.

Q When you were with McGraw-Hill immediately prior to your going back or going to Arnold Bernhardt & Company, did you have any outside income other than your job at McGraw-Hill?

A Yes.

Q What was this outside income from?

A I worked for the Holt Investment Advisory Service.

Q What name did you use in working for the Holt

Investment Advisory System or Service?

A Eric Aiken.

Q You never used the name Enoch Von Ocker?

A No.

Q No time?

A No.

Q What did you do for Holt?

A He would outline generally what he wanted in the way of copy and I would write it.

Q Did McGraw-Hill know agout your job for Holt?

A They knew I free-lanced. No specific revelation was made to them.

Q Did you have permission to free-lance?

A Yes. That was one of the conditions of my returning to McGraw-Hill.

Q That you would be allowed to free-lance?

A Yes.

Q While you worked for Holt did you take any gratuities for publication?

A No, I did not.

Q That was until what year?

A I worked for Tom from -- these are approximate dates -- I would guess '66 through '69.

Q When did you begin to interview for Arnold Bernhardt & Company?

A A recruiter called me some time -- as a matter of fact, they got in touch with me through Holt some time in mid-1969.

Q Did you make application to Arnold Bernhardt for employment?

A I just told you, I didn't make application, they recruited me.

Q You have to fill out an application with them?

A Yes, just a regular employee form.

Q Did you indicate to them you were doing free-lancing on the side?

A I don't believe I did, but I don't know. I would have to see --

Q You don't remember?

A They knew I was free-lancing for Holt because that is where they got in touch with me.

Q Did they tell you to stop free-lancing?

A Of course. Holt was a competitor.

Q Did you stop free-lancing?

A Not right away. It would have been too much of a hardship on Holt.

Q You kept free-lancing for a little while?

A Yes.

Q You were making a double income, double salary?

A I don't consider income from free-lancing activities salary. Yes, I was making money on the outside.

Q You started with Value Line when?

A September of 1969.

Q Did you file an income tax return for 1969?

A No, I didn't.

Q Other than the income that you have indicated from McGraw and Holt and Arnold Bernhardt, did you have any other outside income for 1969?

A No.

Q What is the reason for your not filing an income tax return for that year?

A It just slipped by.

Q Just slipped by you? Isn't it a fact that you had received substantial bribe moneys for your work at Holt and for your work at Arnold Bernhardt and you didn't want to report it and you didn't file an income tax return?

MR. LOWE: Your Honor, I object. I seriously

doubt Mr. Entin has any good-faith basis for asking that question.

THE COURT: Overruled.

Q Will you answer the question?

A It is absolutely not true.

Q It just slipped your mind to file an income tax return?

A I am not an idiot. I know what it means not to file. I just didn't do it.

Q You had to have a reason for just not doing it. What was your reason for just not doing it?

A At the time I didn't have any money to pay my taxes.

Q Did you have money to pay your taxes in 1968?

A Yes.

Q You filed an income tax return in 1968?

A Yes.

Q Did you make more money in 1969 than you made in 1968?

A Yes.

Q But you also spent more, is that correct?

A I guess I must have.

Q Was there any single, individual reason why you were in such a tight cash position that you

couldn't pay your taxes and therefore didn't file a return?

A Not that I recall, beyond moving.

Q So you just didn't file a return?

A That's correct.

Q You testified yesterday that the first time you ever heard of the company known as Power Conversion was in September of 1972?

A I testified to no such thing.

Q Did you testify yesterday that the first time you ever heard of Thomas Zammas in connection with Power Conversion was September of 1972?

A I didn't testify to that either.

MR. ENTIN: Your Honor, may I have one moment? I have to get my notes from yesterday.

(Pause.)

Q What did you testify to yesterday?

A I testified that a man names Stan Perlmutter called me and asked me to go to a meeting with Zammas about a stock named Power Conversion.

Q In what month?

A September.

Q That's fine. That is the first time you ever heard from this man called Perlmutter about meeting

with Tom Zammas on the stock called Power ConVersion?

A To the best of my recollection, yes.

Q And you have a pretty good recollection of this particular incident?

A I have a particularly good recollection of when Perlmutter called me, yes.

Q Is there any way you can pinpoint it in your mind for the jury so they can see if your recollection is accurate?

A I don't understand what you mean.

Q Why do you pinpoint September as the time you received the call from Stanley Perlmutter?

A Because less than a week later we had a meeting with Zammas and within a very short time I did a writeup.

Q Then if someone were to tell this jury that Stanley Perlmutter called you to meet with Tom Zammas in April, May or June or March of 1972, they would be lying, is that correct?

MR. LOWE: I will object to that. It calls for a conclusion as to whether they would be lying.

THE COURT: Yes.

MR. ENTIN: It is a conclusion he can obviously make, your Honor.

MR. LOWE: He would have to know the workings of that particular person's mind and he hasn't been told who the person is.

THE COURT: Yes.

Q If someone were to tell you you had received a call from Stanley Perlmutter to meet with Thomas Zammas in March, April, May or June of 1972, that would not be in accord with your recollection, is that correct?

A It would not be in accord with my recollection, but it could be possible because people were always coming to me with stocks. Also, Power Conversion was one of the hotter stocks in the Street at the time.

Q Stanley Perlmutter was a very close friend of yours?

A I would call him a close friend, not a very close friend.

Q Would you call him a drinking buddy?

A Stanley doesn't drink.

Q Do you recall giving certain testimony to the United States grand jury on October 21 of 1974 with Mr. Lowe representing the Government and asking the following questions to you, page 3, line 22.

"Q Mr. Perlmutter was an old friend and associate of yours, is that correct?

"A Correct."

Do you recall that question, do you recall that answer?

A Yes.

Q Do you recall the following question from Mr. Lowe:

"Q And kind of a drinking buddy?

"A Yes."

Do you recall that question and that answer?

A Okay, but I would tend to view the phrase "drinking buddy" as symbolic rather than the fact that he was a drinker.

Q Are you suggesting that while you are here today testifying against Thomas Zammas you feel free to be flippant?

MR. LOWE: Objection.

MR. ENTIN: Your Honor, he goes through no explanations in his prior testimony.

THE COURT: It is for the jury to determine whether the witness is testifying now truthfully.

MR. ENTIN: I apologize to the Court.

Q So you have referred to Mr. Perlmutter and called him a drinking buddy whether or not he ever touched a drop, isn't that correct?

A All right, I don't mean to suggest he is a teetotaler.

Q And he was a very good friend of yours?

A He was a good friend, yes.

Q As a matter of fact, he was your bag man, isn't that correct?

A That's correct.

Q So he was just more than a passing acquaintance, isn't that correct?

A That's correct.

Q And if Stanley Perlmutter, your friend, your drinking buddy and your bag man called you in March, April, May or June of 1972, you would remember it, wouldn't you?

A We talked on the phone quite a bit, yes.

Q Would you remember it or wouldn't you

rmb-3 Aiken-cross

remember it? Please be responsive to the question, sir.

A I can't give you a straight answer.

Q Be responsive to the question, sir.

A Would you repeat the question?

Q If your friend, your drinking buddy and your bag man had called you in April, March, June or July of 1972 to interest you in a proposition whereby you could make substantial money, you would remember it, wouldn't you, sir?

A Indeed I would.

Q And if anyone came in here and told us that he actually did this, they would not be squaring with the recollection of the facts that you have, is that correct, sir?

A That would be correct.

Q Okay. So Stanley Perlmutter did not call you in March, April, May or June about the stock of Power Conversion, isn't that correct?

A I didn't say that. That is not correct.

Q You don't remember it?

A That is what I am saying.

Q You would remember it if your bag man called you?

A I would remember it if he had mentioned the sum $15,000.

Q And the first time you heard that magic figure was in September of 1972?

A That's correct.

Q Isn't it a fact that when Perlmutter suggested in September of 1972 that you meet with Zammas you refused?

A Yes, that is correct.

Q That avarice and agreed would have nothing to do with making you sit down with a totally -- avarice and greed would not influence you to sit down with a disreputable character like Zammas?

A I don't understand you.

Q Money, even the thought of big dollars wouldn't convince you to sit down with Zammas, is that correct?

A I never said that, no.

Q Why did you refuse to meet with him?

A The prospects of not getting big dollars would influence me not to sit down with him.

Q So you wouldn't meet with Zammas? Your first response to Perlmutter is that you wouldn't meet with Zammas?

A That's correct.

Q What changed your mind?

A He told me that Bill Rodman was involved in the deal and that --

MR. BERGER: Objection, your Honor.

THE COURT: I have instructed the jury as to this and you have a continuing objection, Mr. Berger.

MR. BERGER: Your Honor, it is not the objection, but today is a new day and I would appreciate it if the jury --

THE COURT: I have instructed thejury that any statement made out of the presence of Mr. Rodman is taken subject to connection.

MR. BERGER: Thank you, your Honor.

Q Was that whenStanley Perlmutter told you Bill Rodman was involved?

A Yes, and he also said there would be guarantees.

Q Guarantees for 15,000, correct?

A That's correct, and it was understood that it was more than 15,000, yes.

Q But the guarantees were on the initial payoff?

A Yes.

Q That is what you were most concerned with?

A Correct.

Q When he told you that Bill Rodman was involved, this meant something affirmative to you?

A It meant something affirmative to me and it meant -- I didn't know much about Rodman except by

reputation. It certainly meant a lot to Stanley.

Q What was Bill Rodman's reputation?

MR. BERGER: A continuing objection, your Honor, and at this time I would ask for a severance.

THE COURT: Approach the bench.

(At the side bar.)

THE COURT: I don't understand your motion for a severance.

MR. BERGER: Your Honor, I feel that this continued cross-examination which of course I understand the purpose of defense counsel for Zammas, but it is highly prejudicial to my client, so prejudicial that I believe my client can't have a fair trial, without of course curtailing the cross-examination of the defendant Zammas. I don't feel that the limiting instruction is sufficient to vitiate the prejudice which will occur to my client as a result of the hearing of all of this hearsay testimony even though they are only hearing it subject to connection. It has an effect upon the minds of the jurors and I don't believe that any instruction, whether it is the limiting instruction or the instruction your Honor may give at the end of the case, will dissipate this prejudicial effect that has been caused to my client in the eyes of the jury.

THE COURT: REad the last question and answer,

Mr.Reporter.

(Record read.)

MR. BERGER: Now we are going into the reputation of Mr. Rodman with regard to matters not even involved in this case. I don't know what can come out. I just feel this line of questioning is prej9dicial and highly dangerous to my client and the probative value is certainly not such that Mr.Rodman should be put to this type of prejudicial evidence ccming into the record.

THE COURT: Do you have something to say, Mr. Lowe?

MR. LOWE: Yes, your Honor. First of all, I would like Mr.Berger to point out something specific that prejudices Mr. Rodman, apart from the mention of his name, because Mr.Berger has alleged prejudice but has not spelled out direct prejudice from the testimony.

Secondly, I am inclined to agree with Mr. Berger on one thing, and that is that the probative value of this line of questioning by Mr. Entin is minimal at best and I think perhaps Mr. Entin should be instructed to depart from this line of questioning because I don't think that it unduly hampers his cross-examination.

In any event, I do not see that any prejudice to Mr. Rodman has been created by anything said unless

the mention of his name is prejudicial. I think the answer to this question is very likely to be that Mr. Rodman was well-regarded as a man able to sell stock well, or something to that effect.

MR. BERGER: It is prejudicial because according to what Mr. Aiken is testifying to he did this deal because Mr. Rodman was involved. Mr. Rodman was there for the motivation for Aiken doing the deal, and this is just going into the -- the jury is hearing this and it is prejudicing my client, and it is purely hearsay. As far as the probative value of what Zammas' attorney is doing, I can see the probative value, but all I am saying is that that probative value is by far outweighed by the prejudicial effect on my cwient by showing that my client is the motivating force in the mind of Mr. Aiken.

THE COURT: All right, the motion is denied for a severance and you may proceed.

(In open court.)

BY MR. ENTIN:

Q I was asking you what was Bill Rodman's reputation.

A Oh, sort of like a Babe Ruth of brokers.

Q That is a pretty affirmative sort of a recommendation, isn't it?

A Yes, it is.

Q That is a lot better than, say, a Mike Phillips of brokers?

A Okay, yes.

THE COURT: Well, I don't know that the jury knows wh- Mike Phillips is and I don't think we should have any private understanding between counsel and the witness that the Court and the jury are not in on. Who is Mike Phillips?

MR. ENTIN: The backup shortstop for the New York Mets, your Honor, and I think he is hitting about 220 at the present time.

MR. BERGER: Although the witness' testimony is quite complimentary, I would like to have a continuing objection on this.

THE COURT: All right. Overruled.

Q If in your mind the motivating factor in your agreeing to meet on Power Conversion was the fact that Mr. Rodman had a sterling reputation, why didn't you insist on meeting with Mr. Rodman rather than Mr. Zammas?

A I barely knew Mr. Rodman.

Q So you would meet with Mr. Zammas even though you didn't trust him because somebody told you in the background that Mr. Rodman was involved?

A Let's put it this way: I had done deals with Tom before, he was a familiar face, and although he didn't observe them, he knew what the rules were.

Q Tom had not done any deals withyou since Casa Bella, had he?

A Well, he introduced me to a man named Hal Winkler and that led to the Imperial Industries deal.

Q He didn't do that deal, he just introduced you to somebody who made a deal withyou?

A That's correct, but he shared in the proceeds.

Q To your knowledge?

A Yes.

Q You testified yesterday that when you met with Zammas and Perlmutter at La Fortuna, Zammas told you he and Rodman had a "box" on the stocks?

A Yes.

Q That was at La Fortuna?

A That is correct.

Q And those were teh exact words that were used?

A Well, after three years I am in no position to remember the exact words but I remember the word "box."

Q Did you talk to Mr. Lowe at all prior to testifying in this case?

A Yes.

Q Did he review with you your grand jury transcripts?

A No, he didn't review the grand jury transcripts.

Q Did he give them to you to read?

A Yes.

Q When did you have this meet with John Lowe?

A There was more than one meeting.

Q When was the most recent meeting that you discussed the testimony in this particular trial?

A Last Friday.

Q At that time did you review your grand jury testimony?

A No, I didn't.

Q When was the last time you reviewed your grand jury testimony?

A Approximately two weeks ago.

Q Isn't it a fact, Mr. Aiken, that you never have used the word "box," before in any statement to any grand jury?

A That could very well be.

Q Isn't it a fact that youused the word "job" in the past, they were doing a big job on the stock?

A Yes.

Q If you were to tell the jury you specifically

remembered the word "box," you would be incorrect, isn't that correct?

A No.

Q Why have you never used it before the grand jury in 1973, the grand jury in1974?

A Well, there are two separate subjects here, counselor.

Doing a job in a stock doesn't necessarily mean it is in a box. Box was a favorite word of Tommy. They are not mutually exclusive, but there is no necessary correlation.

2B

Q I am not saying they are mutually exclusive. My question to you is, in all your prior testimony before grand juries, you have never used that word. Why did you use it yesterday?

A Because that is the correct word.

Q And you remembered it yesterday, three years after the incident?

A I could have remembered it before a grand jury but I only went before the grand jury twice and it was essentially the same testimony.

Q You testified yesterday when you met with Mr. Zammas and Mr. Perlmutter, because of the Casa Bella situation you demanded certain guarantees on the payment of $15,000.

A I didn't demand anything. I asked him what guarantees I could get.

Q That was on the payment of the 15,000, is that correct?

A I am a little lost. What question are you asking?

Q What was the guarantee --

A As it turned out, a thousand dollars in cash and holding stock certificates.

Q That is not the question. What did you want him

to guarantee? Did you want him to guarantee that you would be paid the $15,000?

A That's correct.

Q And that was the sole thing that you wanted him to guarantee, is that correct?

A Yes, that's correct.

Q Did you discuss the stocks as the guarantee for Mr. Zammas' future performance in the presence of Mr. Perlmutter?

A Yes, I believe we did.

Q When Mr.Zammas told you that he would produce the stock, you indicated that that would be sufficient guarantee, is that correct?

A I believe so, yes.

Q And you testified yesterday at that time you and he had a deal, is that correct?

A Yes.

Q So the agreement was made that night at La Fortuna in the presence of Stanley Perlmutter, is that correct?

A Yes.

Q Do you recall your testimony before the grand jury May 21, 1973, page 3, -- it appears to be the third question from the top:

"Q And what was the conversation at that meeting and who said what to whom?

"A Well, it was explained if the stock could be written up there would be a financial inducement of $15,000 for so doing."

Do you remember the question and that response?

A No, I don't.

Q You don't remember either the question or the response?

A No, I don't.

Q You don't remember either the question or the response?

A You mean -- that question and that response?

Q Yes, sir.

A Yes, I remember answering a question rather like that.

Q The next question Mr. Lowe asked you is:

"Q Who did the explaining?

"A Both Perlmutter and Zammas."

Do you remember that question and that response?

A Not in detail, but I remember.

"Q Did Mr. Perlmutter say anything about what his interest was?

"A For setting up the meeting and contents he was

to get half the money.

"Q Half of the $15,000?

"A Yes."

Do you remember that?

A Yes.

"Q Was there an agreement reachee at that meeting?

"A I said I would look into it and probably go ahead and be in touch with him.'

Do you remember that question and that answer?

A Generally, yes.

Q So there was no agreement according to this reached that night?

A But there was an agreement reached to the extent that I went up there and got $1000 and the stock certificates.

Q Then why did you mention to the grand jury in 1973 the $1000 or the 1000 shares of stock that you had received as a guarantee?

A I am not the most skilled testifier before grand juries. Maybe the question wasn't asked.

Q As a matter of fact you have lied before a grand jury, haven't you?

A No.

Q You have never lied before a grand jury?

A No.

their stock, they are going to come up, Zammas is going to come up with the money, the $14,000, I am still holding the stock and its guarantee against both.

Q And that is why you didn't return the stock to Mr.Zammas after he allegedly paid you the $14,000, is that correct?

A I was never asked. The thing had collapsed by that time.

Q Isn't it a fact that the thing didn't collapse until October 6th?

A That's right, October.

Q And you testified yesterday you received cash payment from Mr. Zammas on September 28?

A Yes.

Q Doesn't September 28th come before October 6th?

A Indeed, it does.

Q So it hadn't collapsed --

A I had collapsed before there was an opportunity for the stock to rise.

Q Isn't it a fact, Mr. Aiken, thatyou didn't receive 900 shares of stock from Mr. Zammas the night you met at La Fortuna. Isn't it a fact you received the 900 shares of stock after the payment of $14,000?

A Not to the best of my recollection.

Q You lied before the SEC Commission, is that correct?

A Yes.

MR. LOWE: Asked and answered, your Honor.

THE COURT: The objection is that question has been asked and answered.

Sustained.

Q Mr. Aiken, isn't it a fact that the 900 shares of stock you received were not for security on the 14000 additional after the first $1000 of payment?

A Not for security?

Q It was not part of the guarantee that you would be paid the remaining $14,000?

A It was more or less of an overall guarantee the way I understood it.

Q It was an overall guarantee?

A Right.

Q Have you ever testified to anyone else that it was an overall guarantee?

A I don't recall. I haven't been asked the question.

Q You told this jury yesterday what the thousand shares of stock was for. Did youtell them it was an overall guarantee?

A First of all, there were 900 shares.

Q Isn't it a fact thatyou have testified under oath that the stock was security on your alleged override if the Power Conversion stock should happen to go up?

A I don't recall having testified to that question either one way or the other.

Q Do you recall testifying before the grand jury this time on October 21, 1974, at 3:15 in the afternoon. Mr. Lowe was prosecuting again. Page 6, line 3. Do you recall the following question:

"Q In addition to the $1000 you received initially, did you receive any securities for the future payment of the $14,000 that was still owing you?

"A Let me go back. Part of this was on a performance basis. If the stock performed there would have been additional payments beyond the $15000 and the 900 shares of stock I got was sort of security for that."

Do you recall that question and that answer?

A Yes.

Q So isn't it a fact that the 900 shares of stock that you received was not good faith stock from Mr. Zammas to guarantee the $14,000 but was to guarantee the override. Isn't that correct?

A No, it is not a fact because if I am holding

Q Not to the best of your recollection. That is not saying yes and that is not saying no. Does that mean you are really not sure?

A No, it means no.

Q So it is to the best of your recollection --

THE COURT: Mr. Entin, the reporter is having great difficulty with whatyou are saying, you are speaking so rapidly.

MR. ENTIN: I apologize,your Honor.

Q Isn't it a fact that when you answered a moment ago not to the best of your recollection, it is true that it is not to the best of your recollection and you really do not remember when you received the 900 shares of stock?

A I remember receiving it the night at the apartment on 35th and Lexington.

Q Was there anyone else present?

A Mr. Goldfarb.

Q Did Mr. Goldfarb see you receive the 900 shares?

A No, we were in the kitchen.

Q Did you tell your wife of the receipt of the 900 shares?

A I wasn't married at the time.

Q Did you tell your fiancee of the receipt of the 900 shares?

A I can't recall if I told her then or later.

Q Isn't it a fact,Mr. Aiken, that there could have been no real agreement reached the night you met in La Fortuna because you didn't have the ability to guarantee that an article could be written and published?

A Could you break that down into two questions? I am not sure which one you want answered first.

Q Isn't it a fact that you couldn't guarantee the publication of an article on Power Conversion?

A It is a fact I never guarantee when I present a deal like this.

Q Isn't it a fact that you can't guarantee?

A No, that was not a fact.

Q Isn't it a fact that you told Stanley Permutter that every time you have done articles for Value Line Selection and Opinion, they have been submitted to Arnold BErnhardt, and that he has the ultimate authority?

A That is something I always told outside people.

Q And Stanley was outside people?

A Absolutely.

Q And you did tell that to Stanley?

A It is a means of protecting yourself.

Q And you told it to Zammas?

A Absolutely.

Q So as far as anybody knew you couldn't guarantee an article?

A It is an amiable fiction.

Q Is that another way of saying it is a white lie?

A It is a way of guarantees --

Q Is that a way of saying it is a white lie?

A I am not a semanticist. I don't know.

Q For a gentleman who is not a semanticist, you are doing a pretty good job.

MR. LOWE: I object to the --

THE COURT: Yes.

MR. ENTIN: Withdrawn.

Q Mr. Aiken, was it true or was it untrue?

A That I can't guarantee?

Q That is correct.

A I could guarantee about 95 per cent.

Q So you couldn't guarantee 100 per cent?

A Nobody can guarantee 100 per cent.

Q So that night Mr. Zammas was led to believe, as was Mr. Perlmutter, that there was no agreement because you couldn't guarantee publication of an article?

A That's not true.

Q Could you guarantee 100 per cent publication

of the article?

A I just finished telling you now.

Q Did Arnold Bernhardt himself have the final say?

A In maybe one out of 100 cases, yes, Arnold would take the final say.

Q That he would exercise it or that he had the right to exercise it?

A He had the right to exercise it and in some cases he would insist on exercising it.

Q So he had the right to exercise ultimate authority in each and every case, is that correct, the right?

A Yes.

Q And the fact that he only exercised it in one out of 100 was the way he administered the magazine, is that correct?

A The whole organization, that's correct.

Q So he had the ultimate authority?

A That is correct.

Q And if, in effect,he didn't like the article on Power Conversion, he could have kept it out of Selection and Opinion, is that correct?

A Absolutely.

Q When you submitted articles to Mr.Bernhardt for his approval, did he read them?

A I never submitted articles to any great extent for approval. I had, as I say, 95 per cent autonomy.

Q 95 per cent, but not 100?

A The only times things would be crowded out is if Arnold felt like running an editorial or he would take a personal interest in a stock and insisted it would be published but I wasn't paid those kindof wages to go to Arnold to get approval.

Q What were you being paid?

A I testified about $29,000.

Q What were you making on the side?

A I would have to look at my records.

Q Do you have your records with you?

A Of course not.

Q What year was Atlantic Industries?

A That was 1974.

Q What did you get on that one?

A $5000.

Q What was Colonial Foods, what year was that?

A I would have to check. I think it was '72.

G What did you get on that one?

A I don't recall. Colonial was part of a package deal.

Q Package deal with what else?

A Newport Securities was on there, and Associated Foods, I believe.

Q So you don't remember exactly whatyou got?

A I don't have the numbers.

Q Did you give Stanley Perlmutter half of all of this?

A Stan got half of all we got.

Q What did you get for Basic Food Industries?

A Is that on the list?

Q I just asked you what you got for Basic Food Industries.

A I didn't get anything for that.

Q You didn't meet with Allan Applestein and receive gratuities?

A Absolutely not.

Q You didn't receive a beneficial stock interest in Allan Applestein?

A Never.

Q You are sure?

A Absolutely.

Q When did you first become acquainted with the company Power Conversion?

A That would be hard to say. I probably knew about it from the time it was issued. I got prospectuses

on most new issues routinely.

Q To your knowledge did any employee of Value Line working for Selection and Opinion or any of the affiliated Arnold Bernhardt companies do a study on Power Converstion or a cumulative file on it?

A Not to the best of my knowledge.

Q Then if somebody were to testify in this court that when you heard of the company you knew about it because somebody had a file of Value Line, they would be in error?

A It could be. There was 70 analysts there.

Q Do you know Celia Kupferberg?

A Yes, I do.

Q Celia was an analyst there?

A That is correct.

Q And a personal friend of yours?

A Yes.

Q Isn't it a fact Celia Kupferberg had an extensive file on Power Conversion, Inc.?

A Not that I recall, but I can't be sure.

Q Isn't it a fact Celia Kupferberg, with your knowledge and approval, made several trips to the company's plant in Mount Vernon, New York and personally accumulated press releases and brought things back?

A No, that is not true.

Q If somebody were to say that she or another employee had an extensive file at Value Line Selection and Opinion they would not be telling the truth as you know it?

A Not as I know it.

Q If there was no file available at Value Line for you to draw upon with regard to doing an article on the stock, and you had this meeting with Mr. Zammas in early September -- would you say around September 14?

A I would say mid-September, but I can't be absolutely sure.

Q That didn't give you a whole lot of time to compile a research for the article Mr. Lowe has in evidence?

A At the time I told Tom I would need every bit of written material that had been done, that would include press releases and articles of brokerage reports and shortly thereafter I got a plain brown envelope with brokerage house reports, business week articles and press releases.

Q And you took this plain brown envelope -- hold it a second. One second. That bothers me.

You say --

MR. LOWE: Your Honor, I object to the commentary again.

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No.

UNITED STATES OF AMERICA, Appellee,

- against -

THOMAS ZAMMAS, Appellant.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, James A. Steele being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 310 W. 146th St., New York, N.Y.

That on the 26th day of November 75 at 1 St. Andrews Plaza, New York, N.Y. upon deponent served the annexed appendix

THOMAS J. CAHILL

the Attorney in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 26th day of November 1975

Robert T. Green

James A. Steele
JAMES A. STEELE

ROBERT T. GREEN
NOTARY PUBLIC, State of New York
No. 31 0[illegible]
Qualified in New York
Commission Expires [illegible]